

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 109

Civil Revision No.1173 of 2017 (O & M)

Date of Decision: *March 14, 2017*

Mahender Singh

.... PETITIONER

VERSUS

Jaswinder Kaur @ Chhinder Kaur @ Baba & another

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. Rajesh Narang, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated September 14, 2015, vide which, objections preferred by the petitioner have been dismissed by the executing court as well as order dated December 01, 2016, whereby Civil Appeal No.120 dated October 14, 2015 filed by the petitioner before the Additional District Judge, Fatehabad has also been dismissed.

2. Briefly stated, the facts giving rise to the instant case are that Sukhbaj Singh @ Gurbaj Singh and Sukhpal Kaur, born on December 15, 1994 and January 01, 1996, respectively, were minors when their mother

had committed suicide as abetted by Jaswinder Kaur (respondent No.1) which led to registration of FIR No.445 of 1999 under Sections 498-A, 304-B, 34 IPC, Police Station, Ratia, District Fatehabad, against respondent No.1 – Jaswinder Kaur, Gurlal Singh, Tirlok Singh and Amar Kaur. However, Gurlal Singh (father of Sukhbaj Singh @ Gurbaj Singh and Sukhpal Kaur) had died during the pendency of trial, whereafter, the minors started living with petitioner, who is their maternal grandfather. Surta Singh being parental grandfather of minors had entered into a panchayati settlement vide written agreement dated December 11, 2000 whereby the petitioner was appointed as Guardian of minor Sukhbaj Singh @ Gurbaj Singh. Further, land measuring 82 Kanals 12 Marlas, recorded in the name of Surta Singh, was transferred in the name of minor Sukhbaj Singh vide registered release deed dated January 05, 2001.

3. The petitioner, in the capacity of maternal grandfather, filed a petition bearing case No.17/Guardian dated May 19, 2006 under Section 7 of the Guardian & Wards Act, 1890 (for short, 'Act') captioned as 'Mahender Singh vs. General Public' which was allowed vide order dated December 22, 2007 by the Additional Civil Judge (Senior Division), Ratia.

4. At the same time, the paternal family of the minor also got filed a civil suit bearing CS No.378C/2006 titled 'Sukhpal Kaur minor through Amar Kaur vs. Mahender Singh' for permanent prohibitory injunction. In the said civil suit, a compromise was arrived at between the parties whereby Amar Kaur (sister of grandfather of minor) handed over the custody of both the minors to the petitioner whereas the petitioner undertook to take care and maintain both the minors as well as their property and accordingly, the possession of the said land was also got delivered to the petitioner from Tehsildar Ratia, who was appointed as

receiver in the said civil suit. In this way, the said civil suit was disposed of vide order dated 27.10.2006 as per said compromise and the petitioner started maintaining both the minors.

5. Respondent Jaswinder Kaur, who is aunt (Bua) of the minors, filed a petition bearing No.3/Guardian dated February 29, 2008 for appointing herself as Guardian of both the minors as well as all their property in the court of Additional Civil Judge (Senior Division), Ratia. The said petition was contested by the petitioner but during the pendency thereof, a compromise dated November 18, 2011 Ex.C-1 was arrived at between the parties wherein it was settled that respondent No.1 Jaswinder Kaur would be guardian of Sukhpal Kaur whereas Mahender Singh would remain guardian of Sukhbaj Singh as per order dated December 22, 2007 passed in case No.17/Guardian of 2006. It was further agreed that Mahender Singh would pay $\frac{1}{2}$ share of the lease money (out of the lease money collected from the land) to respondent No.1 Jaswinder Kaur for maintenance of minor Sukhpal Kaur from the date of compromise i.e. November 18, 2011 till the date of attaining majority by Sukhbaj Singh i.e. January 01, 2014. As per the terms & conditions of said compromise, statements of parties were recorded on November 18, 2011 and the petition was accordingly disposed of.

6. Minor Sukhpal Kaur attained majority on December 15, 2012 and Sukhbaj Singh attained majority on January 01, 2014. Thereafter, respondent No.1 Jaswinder Kaur preferred an execution petition bearing No.28/Execution dated October 11, 2013 seeking to execute order dated November 18, 2011 submitting that the petitioner has paid only an amount of ₹ 30,000/- and an amount of ₹ 5,20,000/- is still due and outstanding against him. During the pendency of the aforesaid execution proceedings,

petitioner preferred objections which were dismissed by the executing court vide impugned order dated September 14, 2015 and an appeal preferred against the aforesaid order was also dismissed vide order dated December 01, 2016 passed by the Additional District Judge, Fatehabad. Aggrieved against the aforesaid orders, petitioner has preferred the instant revision petition.

7. Challenging the impugned orders passed by the courts below, it has been argued by learned counsel for the petitioner that the same are absolutely against the evidence available on file and settled canons of law. Mis-appreciation of the terms & conditions contained in compromise dated November 18, 2011; order of even date based on the basis of statements of parties and the settled canons of law has resulted into miscarriage of justice. Learned counsel has further contended that entire claim of the respondent is based on compromise dated November 18, 2011 which clearly provides that the petitioner would be liable to pay half share of the lease money of disputed land to Jaswinder Kaur for maintenance of minor Sukhpal Kaur till attaining majority by Sukhbaj Singh. Undisputably, Sukhbaj Singh attained majority on January 01, 2014 whereas Sukhpal Kaur attained majority on December 15, 2012, and as such, respondent No.1 Jaswinder Kaur had no locus standi to file any application in the capacity of guardian of Sukhpal Kaur. Even respondent No.2 Sukhpal Kaur, on attaining majority, has also sold away some property vide sale deed dated July 02, 2014. Similarly, on attaining the majority by Sukhbaj Singh, an independent right has accrued in his favour including right of liability regarding present litigation and the right & liability of the petitioner if any stood discharged since January 01, 2014. Petitioner has already rendered all the accounts to Sukhbaj Singh regarding his property. Both the courts below

did not consider that the execution petition itself is not maintainable as no decree was passed, rather, vide order dated November 18, 2011, respondent No.1 was appointed as guardian of Sukhpal Kaur. Liability, if any, fastened upon the petitioner by virtue of order dated November 18, 2011 has ceased to exist.

8. Undisputably, order dated November 18, 2011 was passed on the basis of compromise (Ex.C-1) which took place between the parties and the statements of parties were also recorded vide which they were bound to honour the terms & conditions of the compromise. Accordingly to the aforesaid order dated November 18, 2011, Jaswinder Kaur was appointed as guardian of respondent No.2 Sukhpal Kaur whereas petitioner Mahender Singh agreed and undertook the responsibility to pay ₹ 3 lac per annum and half of the lease money of suit land to respondent No.1 Jaswinder Kaur for looking after and incurring expenditure for bringing up Sukhpal Kaur from November 18, 2011 till minor Sukhbaj Singh attains the age of majority. It was further agreed that after incurring the expenditure on Sukhpal Kaur, the amount which is left, would be deposited by Jaswinder Kaur in the account of Sukhpal Kaur. However, petitioner failed to honour the aforesaid terms & conditions and committed default in paying the amount of lease money as agreed by him vide compromise, Ex.C-1.

9. As far as non-maintainability of the execution application preferred by Jaswinder Kaur is concerned, Sukhbaj Singh was minor at the time of filing of execution i.e. October 11, 2013, and as per compromise (Ex.C-1), petitioner Mahender Singh was obliged to make payment to Jaswinder Kaur, respondent No.1 for maintaining Sukhpal Kaur till the time Sukhbaj Singh attains the age of majority and not till the time Sukhpal Kaur

attains majority. Thus, the contention raised in this regard does not hold any water.

10. Similarly, another contention of learned counsel for the petitioner that the amount payable to Jaswinder Kaur was not settled, carries no legal weight and is meritless for the simple reason that in the order dated November 18, 2011 passed on the basis of compromise (Ex.C-1), an amount of ₹ 3 lac is specifically mentioned. As such, there is no question of any kind of rendition of accounts.

11. Thus, taking the case of the petitioner from any of the angles, this Court is of the considered view that the impugned orders passed by the courts below are absolutely in consonance with the compromise (Ex.C-1) as well as order dated November 18, 2011. Respondent No.1 Jaswinder Kaur has been rightly held entitled to claim the amount from petitioner Mahender Singh in terms of compromise (Ex.C-1) as well as order dated November 18, 2011. The objections raised by petitioner before the executing court are nothing but a device adopted with malafide intention to delay and defeat the execution of order dated November 18, 2011 and get rid off the terms & conditions binding him to pay the amount recited in the compromise.

11. In the light of what has been discussed above, this Court finds no merit in the instant revision petition and the same is dismissed.

12. No order as to costs.

March 14, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No