

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-1781-2016 (O&M)
Date of decision: 21.11.2017

DARSHAN SINGH THROUGH LRS BALWANT SINGH AND ANR.

...Petitioners

Versus

AJIT SINGH

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Anil K. Garg, Advocate for the petitioners.

None for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against orders dated 12.05.2014 (Annexure P6) passed by the Civil Judge (Jr. Div.), Malerkotla and dated 16.11.2015 (Annexure P8) by the Additional District Judge, Sangrur whereby the objection petition filed by the respondent/JD was allowed by the executing Court and the execution application was ordered to be consigned to records and the appeal preferred by the petitioners against the said order was dismissed being non-maintainable.

Counsel for the petitioners has submitted that Darshan Singh, predecessor-in-interest of Balwant Singh and Kulwinder Singh filed a suit for possession by way of specific performance of agreement to sell dated 07.12.96 or in alternative for recovery of an amount of Rs.6,60,000/- along

with interest. The suit was decreed vide judgment and decree dated 20.01.2003 and his claim for alternative relief qua recovery of an amount of Rs.3,30,000/- along with interest @ 6% per annum was allowed. Darshan Singh filed execution petition dated 23.11.2006 (Annexure P2). During pendency of execution proceedings, Darshan Singh passed away on 30.03.2012 and application dated 09.05.2012 was filed for impleading Balwant Singh and Kulwinder Singh as legal representatives of deceased decree holder Darshan Singh and the same was allowed by the Court on the basis whereof, amended head note of execution petition was filed. Later, JD-Ajit Singh filed objection petition (Annexure P4) for dismissal of the execution petition primarily on the ground that legal representatives of Darshan Singh have no right to continue with the execution proceedings till they obtain a succession certificate as per provisions of Section 214 of the Indian Succession Act, 1925 (in short 'the Act'). After filing of reply by the petitioners and having heard counsel for the parties, the executing Court vide order dated 12.05.2014 uphold plea of the JD/respondent, allowed the objection petition and the execution was ordered to be consigned to records with liberty to the legal representatives to revive execution proceedings on production of succession certificate. The appeal preferred by the petitioners against order passed by the executing Court was dismissed being not maintainable.

Counsel for the petitioners has submitted that the order passed by the executing Court is erroneous and liable to be set aside when

examined in the light of provisions of Section 214 of the Act and judgments of this Court **Kali Ram Vs. Ishwar Singh and others, 1980 RLR 51** and Division Bench judgment **Inder Sain Vs. Man Singh, 1992(1) RCR (Rent) 105**. It is argued with vehemence that as the execution application was filed by the decree holder during his life time and his LRs were allowed to be brought on record without any protest by the JD coupled with the enunciation laid down in the referred authorities, LRs of decree holder are not required to obtain the succession certificate for executing the decree passed in favour of Darshan Singh.

There is no representation on behalf of the respondent who was also earlier being represented by a counsel.

I have heard counsel for the petitioners, perused the paper book and the judgments cited at bar.

Section 214 of the Act, germane to the present controversy, reads as follows:-

“214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.-

(1) No Court shall--

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the

production, by the person so claiming of--

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913, (3 of 1913.) and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 1, (7 of 1889.) or*

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "deb" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes."

This Court in Kali Ram's case (supra) has held in para 2, quoted thus:-

"It is apparent from the order of the executing Court referred to above that execution proceedings instituted by the judgment-debtor were not finally disposed of but were consigned to the record reserving the right to the decree holder to get them restored after the decision of the appeal. In the eye of law, the execution proceedings instituted by the deceased were still pending and the legal representatives, therefore, had a right to continue them without securing any certificate under Section 214 of the Indian Succession Act."

The Division Bench in Inder Sain's case (supra) has relied

upon judgment passed in Kali Ram's case (supra), though the issue before the Division Bench was that succession certificate was procured after expiry of limitation of three years from the date of death of Banwari Lal who died during pendency of the suit. In view of what has been held by this Court in Kali Ram's case (supra), LRs of deceased Darshan Singh can continue with the execution proceedings instituted by Darshan Singh without obtaining succession certificate. That being so, the order impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed and order dated 12.05.2014 passed by the executing Court is set aside. The execution proceedings are revived at the board of the executing Court for proceeding with the matter, in accordance with law.

No order as to costs.

21.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No