

C.R. No. 2812 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2812 of 2014

DATE OF DECISION: 20.7.2017

Ravi Dutt

.....Petitioner

Versus

Amar Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. B.R. Mahajan, Senior Advocate with
Mr. Akhilesh Vyas, Advocate
for the petitioner.

Mr. R.S. Kundu, Advocate
for respondent No.1.

None for respondents No.2 to 12.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 27.8.2011 passed by learned Additional Civil Judge (Senior Division), Narnaul, whereby, objections filed by Judgment Debtor-petitioner were dismissed.

Briefly, the facts of the case as made out in the present petition are that Siri Ram, father of Decree Holder-respondent No.1 was owner of land in dispute measuring 11 bighas 9 biswas and he sold the same to Ravi

Dutt (petitioner), Ram Kanwar, Bhalla and Raj Kumar vide sale deed dated 6.4.1955 for a consideration of ₹2000/-. Amar Singh-respondent No.1, minor son of vendor, filed Civil Suit No. 108 dated 25.5.1959 through his mother for declaration that the land sold was ancestral property. It was sold without consideration and legal necessity. It was not binding on the revisioners. The said suit was dismissed by Sub Judge Ist Class (B), Narnual vide judgment and decree dated 14.5.1960 by holding that the suit land was ancestral qua the plaintiff and the parties are being governed by custom. The sale was for consideration and sold for legal necessity. Respondent No.1 filed Civil Appeal No. 65 of 1960 against the aforesaid judgment and decree, which was allowed by District Judge, Sangrur vide judgment and decree dated 22.7.1961 by holding that a sum of ₹800/- out of ₹2000/- was actually paid as sale consideration and on death of Siri Ram (Vendor), the plaintiff (or any other reversioner) shall be entitled to possession of land in dispute on payment of ₹800/-.

Against the said judgment, RSA No. 1604 of 1961 was filed before this Court, which was dismissed vide judgment dated 10.1.1973. Thereafter, respondent No.1-Decree holder filed application for execution of judgment and decree dated 22.7.1961 On receipt of notice of execution, the petitioner-Judgment Debtor filed objections about maintainability of the execution application but the execution petition was dismissed vide order dated 27.8.2011. Said order was challenged by the petitioner-Judgment Debtor by way of filing civil appeal No. 171 of 2011 before learned District Judge, Narnual, which was admitted and subsequently said appeal was dismissed vide order dated 7.3.2014 being not maintainable.

Learned counsel for the petitioner submits that the petitioner

availed wrong remedy of appeal before learned District Judge, Narnaul against order dated 27.8.2011 and it was dismissed being not maintainable. Immediately after dismissal of appeal on 7.3.2014, the present revision petition was filed for quashing of impugned order dated 27.8.2011. Learned counsel further submits that the delay has occurred due to availing of wrong remedy and it was bona fide. Decree Holder-respondent No.1 filed execution application for execution of judgment and decree dated 22.7.1961 and claimed possession of land in dispute. Objections to the execution application were filed by the petitioner-Judgment Debtor stating therein that the execution application was not maintainable. It was also mentioned in the objections that the land in dispute was not in possession with Judgment Debtors rather it was in possession of lessee-Ram Kumar for the last number of years, who had also expired. After his death, his legal heirs were in continuous cultivating possession over the property in dispute as lessers. Learned counsel also submits that the executing Court dismissed the execution application without recording any finding on the issue of maintainability of the execution application. Simply, it was observed that right of plaintiff-respondent No.1 is protected under doctrine of lis pendens. It was also observed in the said order that the Judgment Debtor-Objector (petitioner) was not in possession of the property and accordingly his objections were dismissed being not maintainable. It is also the argument of learned counsel for the petitioner that Civil Suit No. 108 dated 25.5.1959 was filed for declaration that sale deed dated 6.4.1955 by Siri Ram was illegal and without consideration and as such the plaintiff was entitled to declaration that said sale was inoperative against the interest of plaintiff after death of Siri Ram. Said suit was dismissed by the trial Court vide

judgment and decree dated 14.5.1960 but the appeal filed against the said order was allowed by learned District Judge, Sangrur vide judgment and decree dated 22.7.1961. Said decree passed by the appellate Court was declaratory in nature and was not executable. The remedy available to respondent No.1 was to file suit for possession after death of Siri Ram within a period of three years but no such suit was filed by plaintiff-respondent No.1 and in absence of decree for possession obtained after death of Siri Ram, the execution application was not maintainable in law. Learned counsel also submits that under Section 6 of Punjab Custom (Power to Contest) Act, 1920, the limitation was prescribed for filing suit for possession. The executing Court had not taken into consideration the fact that the property, which was subject matter of suit was different from the property for which the execution was filed. No such document was attached or referred in the execution application. The objections were decided in a summary manner without taking into consideration this aspect. The decree holder-respondent No.1 claimed that the said property was allotted in consolidation in lieu of suit property but said fact was required to be proved by documentary evidence. At the end, learned counsel submits that no proceedings were pending with respect to suit property after the year 1973 and as such principle of lis pendens is not attracted in the present case. Learned counsel has relied upon the judgments of Hon'ble the Apex Court in the cases of **The State of Madhya Pradesh Vs. Mangilal Sharma** 1997 (10) JT 345, **Haryana Vidyut Parsaran Nigam Limited and another Vs. Gulshan Lal and others** 2009 (7) SLR 185 and of Madras High Court in the case of **Kaliammal and another Vs. D.C. Arunachalam and 6 others** 2003 (3) ICC 66, in support of his contentions.

Learned counsel for respondent No.1 submits that order dated 27.8.2011 is well reasoned as it has clearly been mentioned that as per Section 52 of the Transfer of the Property Act, the right of plaintiff is protected under doctrine of lis pendens. The delay in filing the present revision petition has not properly been explained. Learned counsel also submits that as per provisions of Section 47 CPC and 2 (2) (After amendment of 1976), the order of executing Court was not appealable under Section 47 CPC and the appeal was rightly dismissed being not maintainable. False objections were filed as after death of Ram Kumar, his LRs were not in cultivating possession of the land in dispute. In case there was any wrong entry in the revenue record, it could not be presumed that the legal heirs of Ram Kumar were in possession on the basis of revenue record. The Judgment Debtor himself has admitted that he was not in possession of the land in dispute and as such he was not having any right/locus standi to file objections. The purpose to file frivolous objections was just to delay the execution proceedings. Learned counsel also submits that the execution petition was filed within the period of limitation and it was wrongly mentioned in the objections that Siri Ram died 15 years ago, whereas, he died on 13.9.2006. A concocted story has been made up by the petitioner while filing objections.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The facts relating to filing of suit, appeal and thereafter execution are not disputed. In the impugned order, simply, it has been mentioned that a specific stand was taken by the Judgment Debtor/Objector

that he was not in possession of the suit property but it was in the possession of legal heirs of Ram Kumar (lessee). Learned Additional Civil Judge (Senior Division), Narnaul has dismissed the objections by mentioning that according to Section 52 of Transfer of Property Act, right of plaintiff is protected under doctrine of lis pendens. The relevant portion of the impugned order is reproduced as under:-

“To my mind, according to Section 52 of the Transfer of Property Act, right of the plaintiff is protected under doctrine of lis pendens. This application has been filed by the Jds and the same is hereby dismissed being devoid of any merits.”

A perusal of impugned order shows that neither the reasons have been mentioned for dismissal of the objections nor the objections filed by the judgment debtor have been discussed. The impugned order appears to be totally non-speaking and without any application of mind.

Keeping in view the facts as mentioned above, I am of the view that the impugned order is not well reasoned and is not based on any reasoning. Accordingly, impugned order dated 27.8.2011 is hereby set aside and the executing Court is directed to reconsider the objections afresh and pass speaking order within a period of two months from the date of receipt of certified copy of order.

20.7.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No