

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2703 of 2017
Date of decision: 19.04.2017

Dhup Dass Chela Kishan Dass Chela Chetan Dass

... Petitioner

Vs.

Sajjana @ Sampat

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant revision petition, at the hands of the defendant-judgment debtor, filed under Article 227 of the Constitution of India, is directed against the order dated 07.04.2017 passed by the learned executing Court, dismissing the objections raised by the petitioner to the execution application of the decree-holder.

Heard learned counsel for the petitioner.

It is a matter of record and not in dispute that suit for declaration filed by the plaintiff-respondent was decreed by the learned trial Court vide its judgment and decree dated 29.10.2005 (Annexures P-1 and P-2) respectively. The judgment and decree dated 29.10.2005 have attained finality between the parties. Petitioner is judgment-debtor and respondent is decree-holder.

Brief background of the case was that plaintiff/decree-holder and defendants No.1 to 3 were the real brothers. They were sons of Sh. Sheo Dutt son of Maru. Land in question measuring 68 kanal 12 marlas was under the possession of father of the plaintiff/decree-holder-respondent herein and defendants No.1 to 3 for a very long period of more than 70 years in the capacity of gair marushi on 1/3rd batai. After the death of their father in the year 1950, the plaintiff and his three brothers, defendants No.1 to 3, inherited the gair marushi rights from their father. Plaintiff was coming into cultivating possession as gair marushi on batai tihai to the extent of 1/4th share, which was recorded as such in the jamabandi for the year 1957-58 as well as in the relevant khasra girdawari. However, in the next jamabandi i.e. for the year 1963-64 onwards, name of the plaintiff came to be inadvertently omitted in the relevant revenue record. Coming to know about this fact and apprehending his dispossession at the hands of the defendants, plaintiff filed the suit for declaration that he was entitled to get his name incorporated in the column of possession to the extent of 1/4th share in the jamabandi for the year 1963-64 onwards.

Defendants No.1 to 3 were proceeded against ex-parte. Defendant No.4-judgment debtor, petitioner herein, contested the suit by filing his written statement, raising more than one preliminary objections. Plaintiff filed his replication. Appropriate issues were framed. Both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved his case by leading cogent

and convincing evidence. Accordingly, his suit for declaration was decreed by the learned trial Court vide its judgment and decree dated 29.10.2005.

As noticed hereinabove, the judgment and decree dated 29.10.2005 has already attained finality between the parties. Decree-holder was entitled to get the decree executed as it is in its true letter and spirit. He filed the execution application against the petitioner. In the meantime, it seems that petitioner became interested in favour of his alleged chelas namely Rambir and Rajbir. Once learned counsel for the petitioner stated that Rambir and Rajbir were sons of the petitioner Dhup Dass, however, he tried to further qualify and clarify his statement contending that he was not having definite information whether the abovesaid Rambir and Rajbir were chelas or sons of Dhup Dass-petitioner. Be that as it may, Rambir and Rajbir were not party to the decree dated 29.10.2005, which is being sought to be executed by the decree-holder/respondent against the petitioner.

It is also pertinent to note here that had Rambir and Rajbir been feeling aggrieved from the suit for declaration filed by the respondent/decreed-holder or they would have any apprehension of any adverse effect of the suit for declaration qua their rights, they would have certainly come forward for becoming party to the suit for declaration filed by the plaintiff/decreed-holder. However, none of them came forward in this regard and for the reasons best known to them.

Sum and substance of the pleaded and argued case on behalf of the petitioner is that he is trying to defeat the genuine claim of the decree-holder, pursuing this litigation for and on behalf of abovesaid Rambir and Rajbir, which

is not permissible in law. Petitioner is trying to defeat the decree, proceeding on technicalities alone. It is the settled proposition of law that technicalities cannot be permitted to stand in the way of doing complete and substantial justice between the parties. Having said that, this Court feels no hesitation to conclude that the learned executing Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Pratibha Singh and another Vs. Shanti Devi Prasad and another, 2003 (2) SCC 330 (SC).***
2. ***H.K.K. Bail and another Vs. M/s Cyma Exports Pvt. Ltd. and another, 2011 (15) SCC 370 (SC).***
3. ***Dr. K.P. Ranga Rao Vs. K.V. Venkatesham and others, 2015 (1) RCR (Civil) 301 (SC).***
4. ***Mehar Singh and another Vs. Kasturi Ram and others, 1962 AIR (Punjab) 394 (P&H).***
5. ***M/s Dashmesh Rice Mills and others Vs. M/s Govind Ram Anil Kumar, 2003 (3) RCR (Civil) 734 (P&H).***

Before arriving at its just conclusion, the learned executing Court rightly examined, considered and appreciated true facts of the case as well as relevant principles of law applicable thereto, in the correct perspective. The relevant observations made by the learned executing Court in paras 8 and 9 of its impugned order, which deserve to be noticed here, read as under: -

“Further, on perusal of the objections filed by the JD reveals that

*all the objections are vague and general in nature and he cannot take any undue benefit of some technicalities at this stage. It is settled law that the executing Court cannot go behind the decree. It has to execute the same at its stands. Moreover, judgment and decree has been upheld upto learned Court of Sessions and no further revision/appeal has been filed before Hon'ble High Court by DH, therefore, said decree has attained its finality and JD is legally bound to comply the decree as it is. In **M/s Dashmesh Rice Mills and others Vs. M/s Govind Ram Anil Kumar, 2003 (3) RCR (Civil) 734**, it has been held by Hon'ble Punjab and Haryana High Court that: -*

“Technical objections in execution. Scope of Merits of the case. It is well settled that a decree by a competent court having achieved finality must be executed in its terms and cannot be defeated on technical objections.”

It is pertinent to mention herein that decree cannot be defeated by raising vague technical objections and the decree holder cannot be compelled to file another suit as it would lead to multiplicity of litigation which is required to be discouraged as same is against the public policy. Moreover, the executing Court cannot be party to the illegal design of Judgment Debtor who wishes to carry on with his illegal possession by bringing vague technicalities/objections. The executing Court has to ensure that the substantial justice is carried out to help the D.H. to yield the

benefit of the decree in his favour, rather than getting entangled in the vague objections. As far as the case laws cited by the learned counsel for the J.D. are concerned, there is no doubt about the proposition of law held therein, but these are not fully applicable to the facts and circumstances of the present case.

Accordingly, in view of aforesaid discussion as well as in the view of the provisions of case laws cited above, there is no merit in the present objections and the same stands dismissed. Now, JD is directed to make the strict compliance of judgment and decree dated 29.10.2005, on or before 21.04.2017 and Ahlmad is directed to issue warrants of possession qua 1/4th share of DH of the land measuring 68 kanal 12 marla, comprising in khewat No.389, khatoni No.503 situated in village Balsamand (as detailed and described in judgment and decree dated 29.10.2005), against JD, for 21.04.2017 to the executed through Court Baliff. Baliff is at liberty to take the necessary Police help from Police Post, Balsamand, District Hisar in order to execute the warrants of possession and also, Incharge, Police Post, Balsamand is directed to prove sufficient Police force to Bailif, as desired by him. A separate notice to this effect to concern Bailiff be issued immediately.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned executing Court, which may warrant any interference at

the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. As noticed above, petitioner has been found pursuing the present unwarranted litigation for and on behalf of abovesaid Rambir and Rajbir for extraneous considerations, thus, petitioner has not been found to be a bonafide litigant, because of which he is not entitled for any sympathy at the hands of this Court as well. Under these circumstances, it is unhesitatingly held that the learned executing Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

19.04.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No