

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

CR No.3141 of 2017.

Date of Decision: 03.05.2017.

Jagmail Kaur @ Jagpal Kaur

...Petitioner.

VERSUS

Nirmal Singh and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Lalit Pathak, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the order dated 18.04.2017 passed by learned Additional Civil Judge (Senior Division), Nabha dismissing the application under Order XLVII Rule 1 read with Section 151 of the Civil Procedure Code (for short, 'CPC') for review of the order dated 06.08.2014 and also dismissing the application under Order XXI Rule 26 CPC for staying the proceedings of the case, the instant revision petition has been filed by Jagmail Kaur alias Jagpal Kaur-JD/respondent No.4.

The relevant facts that emerge from the impugned order are that Sham Kaur daughter of Sawan Ram wife of Tara Singh filed Civil Suit No.70 of 03.03.1969 against Banto and others for possession of half share in a house. The suit was decreed vide judgment and decree dated 07.12.1971 by the then Sub Judge Ist Class, Nabha. No appeal/ revision was preferred against the said judgment and decree, however Bhupinder Singh (JD-respondent No.3 in the main petition and respondent No.9 in this

decree dated 07.12.1971 was not binding upon him and other JDs. but the said suit was dismissed on 18.10.1977. Sukhdev Singh (respondent No.1 in the main petition and respondent No.3 in the present petition) also filed a similar suit against Sham Kaur and others in which initially the parties to the lis were directed to maintain status quo regarding possession but eventually the said suit was also dismissed on 10.05.1982. The appeal preferred was dismissed vide judgment dated 04.04.1983 by first appellate Court and the regular second appeal before the High Court was dismissed on 12.05.2004. The judgment and decree dated 07.12.1971 as well as the judgment and decree dated 10.05.1982 became final between the parties.

The legal representatives of Sham Kaur (respondents No.1 and 2 herein) filed an application for final decree on 12.05.2003. Bhupinder Singh-JD/respondent filed an application for dismissal of the application for final decree on the ground that it was time barred as the preliminary decree was passed on 07.12.1971 and the application for final decree was filed in the year 2004 i.e. after lapse of 33 years. The application of Bhupinder Singh was dismissed by learned trial court vide order dated 06.08.2014. Thereafter, on 08.09.2014, Bhupinder Singh again filed an application under Order XLVII Rule 1 read with Section 151 CPC for setting aside the order dated 06.08.2014 by way of review; for dismissal of application for execution; and for staying the proceedings of the case till disposal of the application as envisaged under Order XXI Rule 26 CPC. It is the said application that was dismissed by learned trial court vide the impugned order dated 18.04.2017.

The submissions made by Mr. Lalit Pathak, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that the application filed by the decree holders (respondents No.1 and 2 herein) is an execution application for execution of the judgment and decree dated 07.12.1971 and is virtually not an application for passing of final decree. He pointed out that in Para No.5 of the application, applicants-respondents No.1 and 2 averred as “so the present execution is being filed” and further in Para No.6, it was pleaded “that the present Decree-Holders are entitled to get their 1/2 share in the house in dispute separate from the JDs and to get its possession”. Similarly, it is averred in the prayer clause as “It is, therefore, prayed that final decree of the partition of the house in dispute by metes and bounds may be passed and local commissioner may be appointed to visit the spot in dispute and partition the house in accordance with the decree under the execution, so the Decree-Holders may be get the possession of 1/2 share in house in dispute through the agency of the Court”. The verification is to the effect that “verified at Nabha that the contents of this execution, application from Para No.5 to 6 and prayer clause are true and correct to the best of my/our knowledge”.

Learned counsel contends with vehemence that the aforesaid contents of the application clearly indicate that it is an application for execution of the judgment and decree dated 07.12.1971 and not an application for passing of final decree. The decree which respondents No.1 and 2 intend to execute was passed on 07.12.1971. The period for its execution was 12 years which started on 08.12.1971 and came to an end on 08.12.1983. The execution application filed by respondents No.1 and 2 on 24.05.2005 is apparently barred by limitation. There being such legal and technical infirmities in the application, it was liable to be dismissed and

learned trial court committed legal and jurisdictional error in dismissing the application under Order XLVII Rule 1 CPC filed by the petitioner.

Copy of the application filed by respondents No.1 and 2 has been annexed by the petitioner with the instant petition as Annexure-P1. A perusal of the application shows that it was an “application for final decree”. The contents of the application as well as prayer clause also show that a final decree for partition of the house in dispute by metes and bounds had been sought on the basis of the preliminary decree dated 07.12.1971 passed in favour of Sham Kaur, mother of respondents No.1 and 2 (applicants in the main application). It would be wrong to conclude that it was an application for execution and not for passing of the final decree merely for the reason that words like 'decree holders', 'JD', 'execution' etc. had been used in the pleadings by the applicants. Learned counsel for the petitioner could not deny that the judgment and decree dated 07.12.1971 was a preliminary decree passed for partition of half share of the plaintiff in the house in question. The operating portion of order of learned trial court dismissing the application under Order XLVII Rule 1 read with Section 151 CPC filed by the petitioner is as under:-

*“Perusal of the file shows that petitioner has filed application for final decree. Whether final decree was barred by limitation or not has already been decided by the learned predecessor vide order dated 06.08.2014, wherein it has been held that as per the law laid down by the Hon'ble Apex Court in **2009(4) RCR (Civil) 303**, there is no period of limitation for filing application for final decree. The contention that the present application for final decree is not application for final decree, but execution in view of the use of the words “Decree-Holder, JD, execution in the main application as well as in the reply by the petitioners is not sufficient to change the nature of the application because admittedly the civil suit regarding the property in question was decreed vide Judgment and Decree dated 07.12.1971 which was suit for possession of ½ share of the house in question. The certified copy of the said Judgment shows that preliminary decree for partition of ½ share of then*

plaintiff was passed. Execution of preliminary decree cannot be filed. Execution can be only of a final decree. Hence, despite use of word like Decree-Holder, JD, execution in the main petition as well as reply to present application, it does not change the nature of the petition to be an application for final decree. Thus, no ground for reviewing the order dated 06.08.2014 or dismissing the execution at this stage or staying the proceedings is made out. Accordingly, the application is dismissed.”

Learned counsel for the petitioner failed to demonstrate any illegality or perversity in the order of learned trial court. The first application, that the application for final decree was time barred, filed by the petitioner was dismissed by learned trial court by passing detailed order on 06.08.2014. Relying on **Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna & Ors., 2009(4) RC.R. (Civil) 303**, learned trial court held that there is no period of limitation for filing an application for final decree and dismissed the application of Bhupinder Singh. Learned counsel for the petitioner could point out no illegality or perversity in the said finding of learned trial court as well. As such, there was no occasion for filing an application for review of the order by Bhupinder Singh or for filing the instant petition by the petitioner.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

03.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**