

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

CR No.3622 of 2017 (O&M).
Date of Decision: 18.05.2017.

Darbara Singh

....Petitioner.

VERSUS

Randhir Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Saurabh Kaushik, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-11291-CII-2017

Allowed, as prayed for.

CR-3622-2017

Assailing the order dated 07.01.2017 passed by learned Civil Judge (Junior Division), Nabha by virtue of which the objection petition filed by the petitioner was dismissed, the instant revision petition under Article 227 of the Constitution of India has been filed.

The submissions made by Mr. Saurabh Kaushik, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that the decretal amount due to be recovered from the petitioner is very meager as compared to the value of his land attached and put to sale by learned executing Court. The land of the petitioner is still a joint holding with other co-sharers and, therefore, without partition of his share, the land could not be attached. The objection petition filed by the petitioner on the said grounds was wrongly

There is absolutely no force in the argument of learned counsel for the petitioner. While dismissing the objection petition filed by the petitioner, the reasons given by learned executing Court are as under:-

“The grounds on the basis of which present objection petition maintained are that before attachment notice should have been given to Objector/ JD and that attached land is joint property and without its partition, it cannot be attached and that only 2-3 bighas of land would be sufficient to fetch amount involved in the present execution. Perusal of file reveals that present execution is being enforced against money decree dated 12.12.2014. The present execution was filed on 25.9.15 i.e. within period of 2 years from the date of passing of decree and as such no prior notice was required to be given to JD/ Objector. The second ground that only 2-3 bighas of land will be sufficient to fetch the amount involved is also not tenable simply because of the reason that as per provisions under order 21 rule 64 CPC only such portion of attached property shall be put to sale, which would be sufficient to satisfy the land involved in the execution. So far as the ground that property is joint and it cannot be attached before partition is concerned, it is also without any merit simply because of the reason that only share of JD/ Objector is to be sold. No partition is required to be conducted before putting the property to sale. Thus, objection petition is found to be devoid of any merit and it appears to have been filed just to prolong the execution application. Therefore, present objection petition is dismissed.”

Learned counsel for the petitioner failed to demonstrate any illegality, perversity or jurisdictional error in the above order passed by the executing Court. Even if the land owned by the petitioner-judgment debtor is a joint holding, the share of the petitioner could be attached for recovery of the decretal amount. As regards plea of the petitioner that his entire land

is being put to sale whereas the value of his land as compared to the decretal amount is very high, it has been mentioned by learned executing Court that only such portion of the attached property shall be put to sale which would be sufficient to satisfy the amount required to be recovered in the execution. In other words, it is a misconception of the petitioner that his entire land is being put to sale. Only that much share of the petitioner is to be attached and sold which would fetch amount sufficient for satisfying the decree.

Thus, there being no ground for intervention in the order of learned executing Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

18.05.2017.

jitender sharma

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

Whether Reportable : **Yes/ No**