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

**Civil Revision No.4366 of 2013
Date of Decision: 10.10.2017**

Kuldip Kaur

.....Petitioner

Vs

Satnam Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Deepak Arora, Advocate
for the petitioner.

Mr. S.C. Pathela, Advocate
for respondent Nos.7 and 8.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the order dated 10.05.2013 passed by the Civil Judge (Sr. Divn.) Jalandhar vide which enforcement of the decree dated 22.02.2002 passed by the Addl. Civil Judge (Sr. Divn.) Jalandhar in terms of Order 21 Rule 32 was declined.

[2]. Brief facts are that petitioner/plaintiff filed a suit for declaration to the effect that the plaintiff was entitled for allotment of plot under the Local Displaced Person Scheme (hereinafter to be referred as the 'LDPS Scheme') of Jalandhar

Improvement Trust in J.P. Nagar, Jalandhar being legal heir of deceased Gurmukh Singh resident of 455-456, Preet Nagar, Sodal Road, Jalandhar, who applied for allotment of the plot vide diary No.1232 dated 04.07.1979 to defendant No.7. Mandatory injunction was also sought for issuance of directions to defendant Nos.7 and 8 to make allotment of the plot under the aforesaid scheme in favour of plaintiff being legal heir of deceased Gurmukh Singh.

[3]. The suit was contested by all the defendants. Defendant Nos.7 and 8 filed their joint written statement and contested the suit along with defendant Nos.1 to 6. Replication was filed by the plaintiff to the written statement filed by defendant Nos.7 and 8. Issues were framed. Issue nos.1 and 2 were to the following effect:-

- “1. Whether the plaintiff is entitled for allotment of the plot under the Local Displaced Person Scheme of J.I.T. in J.P. Nagar? OPP.*
- 2. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP.”*

[4]. The trial Court while deciding the aforesaid issues nos.1 and 2 held in para No.11 of its judgment in the following manner:-

- “11. Considering the unrebutted or oral as well as*

documentary evidence, the plaintiff is entitled to the allotment of the plot under the Local Displaced Person Scheme of Jalandhar Improvement Trust in J.P. Nagar, who is only valid nominee successor in interest of the deceased Gurmukh Singh son of Nand Singh, R/o 455/456, Preet Nagar, Sodal Road, Jalandhar. Accordingly, the plaintiff is held entitled to seek the relief of declaration mandatory injunction. Both these issues are accordingly, decided in favour of the plaintiff and against the defendants.”

[5]. Evidently, both the issue Nos.1 and 2 were decided in favour of the plaintiff and against the defendants. The plaintiff was held entitled to the allotment of plot under the LDPS Scheme of Jalandhar Improvement Trust in J.P. Nagar being valid nominee/successor in interest of the deceased Gurmukh Singh. In the concluding part of its judgment, the trial Court held that in view of findings recorded under the issues, the suit of the plaintiff was decreed and he was declared to be entitled for allotment and to seek the allotment of plot subject to the condition of the LDPS Scheme of Jalandhar Improvement Trust in J.P. Nagar, Jalandhar being legal heir of deceased Gurmukh Singh. Accordingly the decree was drawn to the following effect:-

“It is hereby ordered that the suit of the plaintiff succeeds and is decreed to the effect that the plaintiff is declared to

be entitled for allotment and to seek the allotment of plot subject to the conditions of the local displaced person scheme of Jalandhar Improvement Scheme in J.P. Nagar, Jalandhar, being legal heir of deceased Gurmukh Singh son of Nand Singh r/o 455-456, Preet Nagar, Sodal Road, Jalandhar who applied for the allotment of the plot vide diary No.1232 dated 04.7.79 to defendant no.7. Further the plaintiff is also entitled for the mandatory injunction and accordingly, the defendants no.7 and 8 are directed to make allotment, subject to the conditions applicable thereto under local displaced person scheme in J.P. Nagar, Jalandhar being legal heir of deceased Gurmukh Singh son of Nand Singh C/o Varinder Singh r/o H.No.455-456, Preet Nagar, Sodal Road, Jalandhar with costs.”

[6]. The petitioner/decreed-holder filed an application for enforcement of the decree and also filed an application for allotment of the plot in terms of decree dated 22.02.2002 on 27.08.2002. Thereafter an application was moved before the Chairman, Jalandhar Improvement Trust, Jalandhar for allotment in terms of decree on 08.03.2006.

[7]. Vide order dated 10.05.2013, the objections filed by defendant Nos.7 and 8 have been accepted and the execution was dismissed by the Addl. Civil Judge (Sr. Divn.) Jalandhar on the ground of limitation holding the execution of decree for mandatory injunction to be barred by limitation as it could have been executed within a period three years in terms of Article 135 of the Limitation Act, 1963, which provides for enforcement of a

decree granting a mandatory injunction. The limitation for enforcement of such a decree is three years from the date of decree or where a date is fixed for performance of the decree.

[8]. Learned counsel for the petitioner submitted that evidently, the aforesaid limitation is applicable in case of suit for mandatory injunction of a decree granted therein. The suit filed by the plaintiff was for declaration to the effect that the plaintiff was entitled for allotment of plot under the LDPS Scheme of Jalandhar Improvement Trust, Jalandhar in J.P. Nagar, Jalandhar being legal heir of deceased Gurmukh Singh. The issue was framed in respect of entitlement of the plaintiff in the suit for declaration as well as for mandatory injunction. Both the issues were answered in favour of the plaintiff.

[9]. Learned counsel further submitted that the relief clause though was on some variance to the findings recorded by the trial Court in para no.11, but in the relief clause and the decree granted by the trial Court, the declaration was granted in favour of the plaintiff in respect of his entitlement for allotment of plot which was subject to the conditions of LDPS Scheme of Jalandhar Improvement Trust, Jalandhar. Since the conditions of LDPS Scheme were defined conditions for the purposes of execution, the applicability viz-a-viz. Articles 135 and 136 of the Limitation Act is to be seen. Article 136 of the Limitation Act

provides for execution of any decree other than granting a mandatory injunction or order of any civil Court, provided that the application for execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. The period of limitation provided under Article 136 of the Act is of 12 years, when the decree or order become enforceable or whether the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought takes place. Learned counsel emphasized upon applicability of Article 136 of the Act in the given situation.

[10]. On the other hand, learned counsel for respondent Nos.7 and 8 vehemently submitted that the case of the petitioner is covered under Article 135 of Limitation Act. Since the decree for declaration was a conditional decree as per the relief clause and the decree drawn by the trial Court, therefore, the only enforceable decree was the decree for mandatory injunction for which period of three years was prescribed for its enforcement in terms of Article 135 of the Act.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. The decree is only a formal expression of the judgment. In para no.11 of the judgment of the trial Court, conclusive findings were recorded in respect of issue Nos.1 and 2. Though in the relief clause some variance was observed thereby making the decree for declaration for entitlement of the plaintiff in terms of allotment subject to conditions of LDPS Scheme of Jalandhar Improvement Trust, Jalandhar. It was not the case of the defendant Nos.7 and 8 that the plaintiff did not fulfill the conditions or any overt act was done by defendant Nos.7 and 8 in the context of disqualification communicating to the plaintiff at any point of time.

[13]. Issue Nos.1 and 2 were categorically decided. *De horse* the conditional relief clause granted by the civil Court as against the finding recorded under issues No.1 and 2 in para no.11 of its judgment, I am of the view that such a proposition is not covered for dismissing the execution as time barred in terms of Article 135 of the Act. Apparently, the suit was filed for declaration as well as for mandatory injunction for which issues No.1 and 2 were distinctly framed. Both the issues were decided in favour of the plaintiff, therefore, the decree was not simpliciter a decree for mandatory injunction, rather the same was for composite relief of declaration as well as for mandatory injunction. Therefore, the case of the plaintiff was covered under

Article 136 of the Limitation Act.

[14]. In view of above, I find that the impugned order suffers from material illegality and irregularity. Consequently, the same is set aside. Revision petition is allowed. Executing Court is directed to proceed with the execution in accordance with law.

October 10, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No