

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

CR-5162-2017

Date of decision: 08.08.2017

Ram Naresh

...Petitioner

Versus

Sukhpreet Singh and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suveer Sheokand, Advocate,
for the petitioners.

Mr. Saurabh Kapoor, Advocate,
for respondent No.1.

Ritu Bahri, J.

Challenge in this petition is to the order dated 24.07.2017 (Annexure P-2) passed by the Civil Judge (Junior Division), Ludhiana, whereby third party objections filed by the present petitioner under order 21 Rule 97, 98, 99, 100, 101 & 102 CPC, has been dismissed.

A civil suit filed by Sukhpreet Singh (respondent No.1) against Sarabjit Kaur (respondent No.2) for possession of the property/shop measuring 17-7/9 square yards comprised in Khasra No.31//23, Khata No.369/387, situated within the revenue estate of village Kakowal, Hadbast No.80, Tehsil and District Ludhiana and for declaration that the alleged sale deed dated 28.05.2010 was a forged and fabricated document, was decreed vide judgment and decree dated 23.09.2015 (Annexure P-1). While decreeing the suit, sale deed dated 28.05.2010 was held to be forged and fabricated document and therefore, was declared as illegal, null & void.

Possession of the defendant (respondent No.2 herein) over the suit property was held to be illegal and liable to be vacated. After passing of the said decree, execution application was filed by decree holder (respondent No.1). During the pendency of execution, present petitioner (Ram Naresh) filed third party objection taking a plea that pursuant to the sale deed dated 28.05.2010, he had taken the premises on rent from Sukhpreet Singh-defendant at the rate of Rs.1800/- per month, therefore, his objections be decided after framing of issues and recording of evidence of all the parties.

The executing court, vide impugned order dated 24.07.2017, dismissed the objections by observing that the judgment and decree dated 23.09.2015 has attained finality, as the same has not been challenged by any party. Judgment debtor (respondent No.2) did not mention in the original suit that he had given the suit property to the present petitioner (objector) as sub tenant. As per report given by the Bailiff, judgment debtor was in possession of the suit property and was obstructing execution of the warrants of possession. Accordingly, the Bailiff (Warrant Officer) had made a request for execution of the warrants with the help of police. There was no report of the Bailiff that the present petitioner (objector) was in possession of the suit property or any portion thereof being a tenant. Hence, as per the report given by the Warrant Officer/Bailiff, he has not been found to be in possession of the suit property. The decree dated 23.09.2015 is binding on the judgment debtor (respondent No.1) as well as sub-tenant/objector (present petitioner). Reference has been made to the judgment passed in **Biswanath Poddar Vs. Archana Poddar**, 2001 (2) RCR (Rent) 451, wherein Hon'ble the Supreme Court was considering a case under the West Bengal Premises Tenancy Act, 1956. It was held that if, a

tenant had been inducted without the consent of landlord, then in a suit for eviction, it was not necessary for the landlord to implead sub-tenant as party. A decree of eviction is binding on the sub-tenant. It was further observed as under:-

“15. Similarly, this Court in Silverline Forum Pvt. Ltd. v. Rajiv Trust and another, 1998 (1) RCR (Rent) 394, accepted the law laid down in Shantilal's case (supra) and held that sub-section (1) of Section 16 requires 3 requisites, namely, (i) the sub-tenancy should have been created after the commencement of the West Bengal Act; (ii) the landlord of the premises should have given written permission to the tenant to create sub-tenancy; and (iii) tenant and the sub-tenant should have notified the landlord of the creation of sub-tenancy within one month of such creation. It also held that sub-section (3) of Section 13 mandates that the decree for ejectment shall be binding on every sub-tenant unless he falls within the ambit of either sub-section (2) or (4) of Section 13 meaning thereby whether such sub-tenant is a party to the original eviction proceeding or not, the same will be binding on the sub-tenant. In the instant case also, in view of the fact that respondent No.2 has not complied with the statutory requirement under the Act, the eviction decree against the first respondent would be binding on the second respondent in view of the provision of sub-section (3) of Section 13.”

Learned counsel for respondent No.1-decree holder states that a civil suit filed by objector-Ram Naresh (present petitioner) against Sarabjit Kaur and Sukhpreet Singh seeking relief of permanent injunction restraining them from interfering in his peaceful possession, has been dismissed on 24.07.2017. A perusal of the order dated 24.07.2017 passed by the Civil Judge (Junior Division), Ludhiana, shows that in execution proceedings, warrants of possession had been issued and as per report received, defendant No.1 (JD) was obstructing execution of the warrants of possession and police help was required to execute the warrants. There was no report that Ram Naresh (present petitioner) was in possession of the suit property as a tenant.

Once the Bailiff (Warrant Officer) has not found the present petitioner to be in possession over the property in dispute and has reported that defendant (JD) was obstructing execution of the warrants of possession, the present petitioner has no right to file objections during the pendency of execution.

Having examined the impugned order, no illegality or irregularity has been found therein warranting interference by this Court.

Resultantly, finding no merits, present petition is dismissed.

(RITU BAHRI)
JUDGE

08.08.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No