

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

CR No.5355 of 2017 (O&M)

Date of decision: 15.09.2017

Sonu Puri

...Petitioner

Versus

Shamsher Puri and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.S. Mamli, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against orders dated 05.05.2017 and 18.07.2017 (Annexures P-1 and P-2) passed by the Civil Judge (Sr. Div.), Narwana whereby warrants of attachment in respect of land measuring 10 marlas have been issued and 09.08.2017 was the date fixed for setting out terms of the proclamation of sale.

A brief backdrop of the case is that respondent No.1 filed a suit for recovery of Rs.6,85,000/- i.e. Rs.5,00,000/- as principal amount and Rs.1,85,000/- towards interest on the basis of pronote and receipt dated 15.12.2009 executed by Ram Kumar brother of Shamsher Puri. The suit was decreed vide judgment and decree dated 06.01.2015 (Annexure P-3). The decree holder filed an application for execution of the decree. Ram Kumar/JD did not pay the decretal amount and he was arrested and sent to civil imprisonment for a period of 3 months.

The decree holder filed an application for attachment of 10

marlas of land of JD by alleging that in order to defeat genuine claim of the decree holder, JD fraudulently sold his plot in favour of one Dhanpati vide sale deed No.1714 dated 06.02.2012 and later the same property was transferred in the name of Sonu son of JD vide sale deed No.112 dated 10.04.2012 executed by Dhanpati, therefore, the property in question is liable for attachment and sale for recovery of the decretal amount.

The executing court by relying upon judgment of this Court **Waryam Singh Vs. Rameshwar Dass and another, 1989 (2) PLR Vol.96 Page 68** allowed application of the decree holder and ordered for attachment of 10 marlas land i.e. 1/6th share of Sonu Puri (petitioner herein). Later vide order dated 18.07.2017, the Court fixed 09.08.2017 for settling the terms of proclamation of sale.

Counsel for the petitioner has submitted that Ram Kumar, his father sold the property in question in favour of Dhanpati vide sale deed dated 06.02.2012 for a valuable consideration of Rs.3,18,000/- and stamps worth Rs.9550/- were affixed on the said sale deed. It is further submitted that Smt. Dhanpati wife of Avtar Puri has no relation with the petitioner or the JD. The petitioner purchased the property from Dhanpati vide registered sale deed dated 10.04.2012 and stamps worth Rs.16,500/- were affixed on the sale deed. It is further argued that the petitioner was residing in Gujarat and did not have knowledge of any transaction between his father and uncle regarding taking of loan. Another submission made by counsel is that the civil suit was instituted by Shamsher Puri in July 2012 but prior thereto, the

sale in favour of Dhanpati and so also in favour of the petitioner by said Dhanpati was effected. In addition, it is argued that the executing court has proceeded to put the attached property to auction without allowing the petitioner to file his objections in accordance with law. It is argued that a serious prejudice is likely to be caused to the petitioner in case his property is put to auction for realization of decretal amount which is an obligation of his father Ram Kumar.

I have heard counsel for the petitioner, perused the paper book particularly the various annexures appended with the petition.

The suit for recovery filed by Shamsher Puri brother of JD Ram Kumar and uncle of present petitioner is based upon the pronote and receipt dated 15.12.2009. Ram Kumar sold his property in favour of Dhanpati vide sale deed dated 06.02.2012. Perusal of the sale deed dated 06.02.2012 would make it evident that no payment for purchase of the property was made before the registering authority much less through a cheque or demand draft etc. as an evidence of payment. Similarly no payment was made by the petitioner to Dhanpati either before the registering authority or through bank transaction etc. The mere fact that registration charges were borne for getting the property transferred through sale deeds is not sufficient to accept contention of the petitioner that the transactions were genuine or were not made by the parties with an intent to defeat claim of the decree holder. The executing court, by relying upon judgment of this Court in Waryam Singh's case (supra) has rightly held that

a creditor can exercise his option to avoid such fraudulent transfer by attachment of transferred property in execution of decree and a regular suit is not necessary for the purpose. In this view of the matter, I do not find any patent or jurisdictional error in the orders impugned warranting intervention in exercise of supervisory jurisdiction by this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, the petitioner may take recourse to appropriate remedy, if any, permissible in law.

15.09.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No