

In the High Court of Punjab and Haryana at Chandigarh

225

CR No.6244 of 2015

Date of decision: 8.11.2017

M/S LEKH RAJ & SONS AND ORS

.....petitioners

Versus

M/S RAJESH TRADING COMPANY AND ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Jain, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J.(oral)

Petitioners have assailed the order dated 24.2.2015 passed by the Additional Civil Judge (Sr.Divn.), Phillaur, releasing the attached property with a liberty to the decree holder either to get the decree amended on the correct name or to furnish fresh list of properties in the name of the judgment debtors.

The impugned order has been passed on the report submitted by the Tehsildar on the issue of sale warrants. The property of the judgment debtors was attached in execution of the decree. Judgment debtors are partners of the firm M/s Rajesh Trading Company. According to the report of the Tehsildar dated 10.10.2014, sale warrants could not be

executed as the decree was found to be against Naresh Kumar Aggarwal and Rajesh Kumar Gupta, sons of P.K.Gupta residents of 33/122, New Colony, Phillaur. The report of the Tehsildar revealed that the attached property bearing khasra Nos. 201 and 202 was not in the name of aforesaid Naresh Kumar Aggarwal and Rajesh Kumar Gupta.

Learned counsel for the petitioners submitted that the ownership of the property in the name of Naresh Kumar Aggarwal and Rajesh Kumar Gupta was never in dispute in view of para No.2 of the application filed by the judgment debtors under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex parte judgment and decree dated 22.11.2007 passed by the Civil Court. Para No.2 of the application was to the following effect:-

“That on 15.11.2013, the applicants came to know about the said case to a little extent, when the applicant No.2 obtained the certified copy of jamabandi of his property which is comprising of khasra No.201 (0-1), 202 (0-1) situated in the area of Phillaur Cantt, Phillaur, District Jalandhar from Fard Kendra, Tehsil Complex, Phillaur. He was just astonished to see that there is some kind of entry of stay dated 30.8.2006 on the fard jamabandi. At this he enquired into the matter concerned Halqa Patwari

and other revenue official. He also came to know that this very property has also been attached in some kind of execution proceedings. Thus, he also came to know about one execution case pending against him, titled as “M/s Lekh Raj vs. M/s Rajesh Trading”, bearing Execution No.33/12, pending in the court of Mrs.Preeti Sukhija, PCS, Additional Civil Judge (SD), Phillaur and in which next date of hearing is 30.11.2013. After inspection of the said execution file on 22.11.2013, the applicant came to know about the ex parte judgment and decree in dispute dated 22.11.2007 i.e. about the case as detailed above.”

In addition to the aforesaid admission, learned counsel for the petitioners relied upon the jamabandi (Annexure P-15), wherein entries were made in the name of Naresh Kumar s/o Prem Nath in the column of ownership in respect of khasra No. 201/202. In the remarks column, there was entry of stay order vide Rapat No.596 dated 30.8.2006. Learned counsel contended that the issue of ownership has been unnecessarily raked up by the trial Court on the basis of alleged report of Tehsildar, which was factually wrong.

The respondents were sought to be served by means of publication. Substituted service was ordered to be effected in terms of Order 5 Rule 20 CPC. Thereafter, publication was

made in the newspaper. Despite service, none has appeared on behalf of the respondents.

In view of facts and circumstances of the case, I deem it appropriate to set aside the impugned order and remand the case to the trial Court to decide the case afresh in the light of material on record without being influenced solely on the basis of report submitted by the Tehsildar. The trial Court is directed to revisit the issue within a period of two months from the date of receipt of certified copy of the order.

Petition stands disposed of accordingly.

November 08, 2017
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking	Yes/No
Whether reportable	Yes/No