

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

**CIVIL REVISION No. 666 of 2017 (O&M)
DECIDED ON: MARCH 14, 2017**

**GANGA DEVI (DECEASED) THR. LR. SARABJIT SINGH
(DECEASED) THR. LR JASKARAN SINGH**

.....PETITIONERS

VERSUS

NARINDER SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Munish Gupta, Advocate
for the petitioners.

JASPAL SINGH, J

CM No. 2035-CII of 2017

Application is allowed, as prayed for.

CR No. 666 of 2017

By virtue of instant revision preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated November 25, 2016 (Annexure P-6) passed by learned Civil Judge (Sr. Division), Hoshiarpur whereby, an objection petition filed by them has been dismissed.

The contention of learned counsel for the petitioner is that

respondent/plaintiff Narinder Singh filed a suit for possession by way of specific performance of agreement to sell dated August 29, 2001 or in the alternative suit for recovery of ₹3,25, 000/- alleged to have been paid to the defendant-Ganga Devi as an earnest money out of total sale consideration alongwith interest and also for permanent injunction restraining the respondent-defendant to change the nature of the suit property as well as from alienating the same in any manner. During the pendency of objection petition, afore-said suit for possession by way of specific performance of agreement to sell dated August 29, 2001, was decreed vide judgment and decree dated October 13, 2009. However, aggrieved against the said judgment and decree dated October 13, 2009, defendant Ganga Devi preferred an appeal, which was partly allowed and suit of the respondent-plaintiff was decreed in the alternative for relief of recovery of ₹3,25,000/- alongwith interest 12% per annum from August 29, 2001 till the recovery of entire amount. The defendant-appellant Ganga Devi was also restrained from alienating the suit house in any way till she makes the payment of entire decretal amount to the respondent-plaintiff. In other words a charge was created with respect to the suit house for enabling the respondent-plaintiff/decreed holder to realize the full amount of decree alongwith interest. The afore-said judgment and decree passed by lower Appellate Court has attained finality as no subsequent appeal was preferred.

Since the judgment debtor Ganga Devi did not comply with

the decree passed in appeal, decree holder Narinder Singh constrained to

file an execution application for the recovery of decretal amount alongwith interest and costs. During the pendency *lis* judgment debtor Ganga Devi was taken away by nature and her legal heirs namely Sarabjit Singh (since deceased) and Jaskaran Singh were brought on record. Now some amount was deposited but the decree was not fully satisfied. Accordingly, property in question i.e. House was put on sale and as per order dated November 30, 2013 the sale warrants were received back duly effected. The objection petition was preferred against the auction.

Here, it would be pertinent to mention that at the time of auction, which was conducted by Dr. C.S. Marwaha, Advocate, Court Auctioneer, the judgment debtor Ganga Devi as well as her attorney, her son Sarabjit Singh as well as decree holder Narinder Singh were present. The necessary inquiries were made from the parties with regard to the auction property and it was only, thereafter, an auction was conducted. Number of persons participated in the bid. The highest bid was given by Satpal son of Charan Singh for a sum of ₹20,50,000/-. At that time, Sarabjit Singh attorney of the judgment debtor Ganga Devi raised no objection. Rather, he suffered a statement that he has no objection, if the property is sold in auction to Satpal, which is a reasonable price. Not only this, even Judgment debtor Ganga Devi also suffered a statement that she has no objection if the property is sold at ₹20,50,000/-. So, in view of the facts that the Judgment Debtor cannot be allowed to re-agitate the matter.

The impugned order passed by learned Civil Judge (Sr. Division),

Hoshiarpur is absolutely in consonance with the evidence available on

record as well as legal proposition. Each and every aspect has been dealt with and the impugned order is a well reasoned one. Moreover, the objectors/petitioners are otherwise estopped from re-agitating the matter time and again, in view of the statements already suffered by them admitting the conducting of auction for a some of ₹20,50,000/- in favour of Satpal.

In the case of Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another; AIR 1960 SC 941, Hon'ble Supreme Court has held that the principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law has been decided between two parties in one suit or proceedings and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

Thus, it can be safely concluded that objection petition is

nothing but an abuse of process of court as well as law.

In the light of what has been discussed above, this Court does not find any merit in the instant revision. As such, it stands dismissed whereby, impugned order dated November 25, 2016 is upheld. No order as to costs.

JASPAL SINGH
JUDGE

MARCH 14, 2017
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Whether speaking/non-speaking *Yes/No*

Whether reportable *Yes/No*