

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7476 of 2016
DECIDED ON: JANUARY 30, 2017

PURAN SINGH THROUGH LRS

....PETITIONER

VERSUS

PUSHPA RANI THROUGH LRS AND ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Raman Goklaney, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant civil revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the quashing of order dated August 30, 2016 (Annexure P-1) passed by learned Civil Judge (Jr. Division), Ferozepur in an Execution Application bearing No. 69 of 29.05.2010/29.02.2016 titled as “*Smt. Pushpa Rani & another vs. Puran Singh*” whereby, an objection petition preferred by the legal heirs of Puran Singh/JDs; has been dismissed.

While assailing the impugned order, it has been submitted by learned counsel for the petitioner that the facts giving rise to the instant petition are that respondent/decreed holder-Pushpa Rani alleging that defendants are in

unauthorised possession of the land bearing 11 kanal 11 marla, which was contested by the predecessor-in-interest of the petitioner-objector on the ground that they had been allotted a land by rehabilitation authorities in lieu of land left by them in Pakistan. Later on, it was found that some excess allotment was made and the revenue authorities was allowed to purchase the excess land. However, allotment was challenged before the revenue authority. The decree holder claimed her ownership on the basis of sale deed dated February 17, 1983 through the power of attorney of Chanan Singh namely Sohan Lal Kapoor. However, the decree holder succeeded in obtaining the decree fraudulently. Pushpa Rani-decree holder had also filed another suit on the same averments against Pritam Singh and Tara Singh in which the true picture was brought by the defendants namely Pritam Singh and Tara Singh and ultimately, the said suit for possession preferred by Pushpa Rani was dismissed. Thus, the petitioner(s) preferred objection petition before the Executing Court that the judgment and decree under execution has been obtained by playing fraud with the Court and actually Chanan Singh died prior to the execution of sale deed.

Moreover, once another suit has already been dismissed, which was on the same lines and evidence, the judgment and decree in favour of the decree holder-Pushpa Rani, which is being sought to be executed being result of fraud is un-executable. Rather the same is nullity.

While relying upon the judgment of Hon'ble Apex Court rendered in the case of **Changalvaraya Naidu vs. Jagannath; 1994 (1) RRR 253**, it has been submitted by learned counsel for the petitioner(s) that it is a well settled proposition of law that a judgment and decree obtained by playing fraud on the Court is a nullity and nonest in the eyes of law. Such a judgment/decre by the

first court or by the highest court, has to be treated as a nullity by every court, whether superior or inferior which otherwise can be challenged in any court even in collateral proceedings.

After bestowing due consideration to the various submissions made by learned counsel for the petitioner(s) and scrutinizing the impugned order, this Court does not find any merit, therein.

Concededly, the judgment and decree under execution has attained finality as it has not been set aside by any competent court of jurisdiction. Though, an objection has been taken by the petitioner/JDs during execution proceedings that the judgment and decree has been obtained by playing fraud with the Court. But to the utter surprise, neither any element of fraud has been pleaded nor the manner in which it is alleged to have been played. It was incumbent upon the petitioner/JDs not only to plead the factum of fraud but to establish/prove it also. It would also be pertinent to mention here that if the sale deed of some other purchaser in some other suit or litigation between the some other parties has been set aside, it does not *ipso facto* mean that the judgment and decree under execution has also become nullity. The mere pleadings in this regard are not suffice. The judgment and decree passed in another suit cannot be made the foundation to scuttle down the rights of decree holder, which have accrued to her on the basis of judgment and decree under execution. It is also well settled proposition of law that an executing court cannot go behind the decree and it has to be implemented with all its rigors. An objection petition preferred by the petitioner/JDs are nothing but a devise adopted by them just to delay and defeat the execution of decree.

Thus, this Court does not find any merit in the instant revision

petition. As such it stands dismissed.

No order as to costs.

JANUARY 30, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*