

Civil Revision No. 957 of 2017 (O&M)

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

Civil Revision No. 957 of 2017 (O&M)

Date of decision: 1.3.2017

Mohan Singh Kalsi

... Petitioner

Vs.

Gian Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Ruch Sekhri, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

CM No. 4559-CII-2017

Applicant seeks permission to place on record Annexures P-16
and P-17 (colly).

Application is allowed, as prayed for.

CM stands disposed of.

CR No. 957 of 2017

Present revision petition is directed against the impugned order
dated 6.12.2016 passed by learned executing court, whereby objections filed
by third party were dismissed.

Heard learned counsel for the petitioner.

It is a matter of record that plaintiff-Smt. Gian Kaur-respondent

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No.1 herein, filed a suit for recovery of ₹4,55,000/- on the basis of agreement to sell dated 14.8.2006, executed by the defendants in favour of the plaintiff. Defendants did not put appearance despite service and as a consequence, they were proceeded against ex parte. Plaintiff produced her ex parte evidence and duly proved her case. On the basis of ex parte evidence produced by the plaintiff, her suit was decreed by learned trial court, vide judgment and decree dated 3.5.2012.

Since the decree in favour of the plaintiff/decreed-holder had attained finality, she filed execution application vide Annexure P-4. Notice of the execution application was issued under Order 21 Rule 66 CPC, but the judgment-debtor did not come forward. He was served through proclamation. Thereafter, the property in question was attached and it was ordered to put to auction on 17.12.2016. At this stage, third party namely Mohan Singh, who is none else but brother of the judgment-debtor, came through his power of attorney-Piara Singh, who is also a brother of judgment debtor. Objections were filed through Piara Singh, pointing out that property sought to be auctioned was owned by Mohan Singh-objector. However, since no document of title could be shown to the learned executing court by the objector, impugned order dated 6.12.2016 came to be passed by learned executing court, dismissing the objections raised by third party-Mohan Singh through his power of attorney-Piara Singh. Having said that, this Court feels no hesitation to conclude the learned executing court committed no error of law, while passing the impugned order and the same deserves to be upheld.

During the course of hearing, when it was specifically and repeatedly asked from learned counsel for the petitioner to show any

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document of title in favour of petitioner-Mohan Singh regarding the property sought to be auctioned, she had no answer and rightly so, it being a matter of record. In fact, judgment-debtor namely Davinder Singh as well as petitioner-Mohan Singh, who are real brothers of Piara Singh, are staying abroad, as pointed out by learned counsel for the petitioner. It seems that judgment-debtor and Mohan Singh colluded with their brother Piara Singh, with a view to defeat the decree in question. Had the judgment-debtor been serious about the present litigation, he would have certainly contested the suit or would have sought setting aside of the order, whereby he was proceeded against ex parte as well as the ex parte decree dated 3.5.2012, however, he did not do so for the reasons best known to him. Under these peculiar facts and circumstances of the present case, it can be safely concluded that learned executing court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of Hon'ble the Supreme Court as well as this Court:-

1. Barkat Ali and another Vs. Badri Narain (D) by Lrs, 2008 (3) SCC 615
2. Sunil Kumar Vs. Central Bank of India and others, 2012 (19) RCR (civil) 407
3. Bhagwan Dass Vs. Sajjan Singh and another, 2014 (39) RCR (civil) 492

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by learned executing court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article

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227 of the Constitution of India. In fact, the impugned order has been found based on factually correct and legally justified approach adopted by learned executing court and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

1.3.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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