

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.96 of 2017

Date of decision:- January 12, 2017

MAHENDER SINGH AND OTHERS

...PETITIONERS..

VS.

GURDAYAL SINGH AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Ashwani Bakshi, Advocate,
for the petitioners.

JASPAL SINGH, J.

Challenge in this civil revision petition preferred under Article 227 of the Constitution of India is to the order dated 09.11.2016 (Annexure P-3) passed by Id. Additional Civil Judge (Sr. Division), Narwana whereby objections filed by the petitioners in execution proceedings captioned as ***“Gurdyal Singh and others vs. Mahender Singh and others”*** have been dismissed.

2. The contention of learned counsel for the petitioners is that undoubtedly, Amar Singh sold away the land in suit in favour of defendants/petitioners by way of a registered sale deed dated 03.01.1962 but the said sale deed was challenged by the legal heirs of Amar Singh by filing a civil suit in the year 1962 on the ground that the said alienation/sale made by Amar Singh is without legal necessity and without consideration. The said suit was decreed vide judgment and decree dated 13.06.1977 whereby

the sale deed dated 03.01.1962 was set aside. Appeals preferred by the petitioners were also dismissed by this Court as well as Hon'ble Apex Court.

3. The contention of learned counsel for the petitioners is that even though the sale deed has been set aside it being without legal necessity but it still survives and is operative qua the share of Amar Singh in the coparcenary property. The sale in favour of objectors by Amar Singh cannot be said to have become void so as to defeat the right of the petitioners i.e. purchasers to the vendors share in the property and thus, the dismissal of the objections by the trial court is illegal and as such the same is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant petition.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners but find the same to be without any legal and factual substance.

5. Concededly, the sale deed dated 03.01.1962 executed by Amar Singh in favour of the defendants-petitioners has since been set aside in its entirety vide judgement and decree dated 13.06.1977, the said judgment has attained finality as appeal(s) preferred by the petitioners-defendants challenging the same has since been dismissed up to the Hon'ble Supreme Court. When the sale deed has already been set aside in its entirety, the petitioners have left with no right to agitate and retained the possession of the land subject matter of the sale deed dated 03.01.1962 or judgement and decree dated 13.06.1977. In fact, after the sale deed has been set aside, it cannot be said to be either in existence or in operation. Thus, the objections filed by the petitioners have rightly been dismissed by the trial court.

Moreover, the objections, which has been taken by the learned counsel for the petitioners, during the course of arguments were not earlier taken at the appropriate stage in the civil suit decided on 13.06.1977 or before the appellate court(s). Now, the petitioners otherwise stand estopped from raising any such objections.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed.

7. No order as to costs.

January 12, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No