IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA No.38 of 2012 (O&M)
Date of Decision: 14.07.2017

Rita Goyal

......Appellant

Vs

Tejvir Singh and others

....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Japneet Kaur, Advocate
for the appellant.

Mr. K.P.S. Virk, Advocate for
Mr. K.S. Dhaliwal, Advocate
for respondent Nos.1 to 3.

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RAJ MOHAN SINGH, J.

[1]. Appellant has preferred the present appeal against the order dated 01.11.2010 passed by Additional Civil Judge (Sr. Divn.) Ludhiana and order dated 07.04.2012 passed by Additional District Judge, Ludhian vide which objections filed by the appellant/objector were dismissed and appeal to that effect was dismissed by the lower Appellate Court.

[2]. Brief facts are that the appellant filed the objections on the ground that the decree holder by way of misrepresentation

and in collusion with the revenue officials got the revenue record fabricated and got the sale certificate issued from the Court in the name of Tejvir Singh in respect of land measuring 420 sq. yards comprised in *Khewat* No.749-751, *Khatauni* No.829-831, *Khasra* No.75/13, 17 vide sale certificate dated 23.09.1999. After obtaining the sale certificate, Tejvir Singh applied for obtaining warrants of possession of the said land. Objector claimed that Tejvir Singh was not entitled to get possession of the land as the land was never attached and, therefore, alleged auction proceedings including confirmation of sale and issuance of sale certificate were *per se* illegal and no right was conferred upon Tejvir Singh to stake claim *qua* the property of M/s Rawat Steel which was never the suit property.

[3]. Suit was filed by Prem Singh against M/s Hari Om Steel, proprietorship concern and Raj Kumar son of Mukandi Lal sole proprietor of M/s Hari Om Steel Traders. M/s Rawat Steel was not impleaded as defendant in the suit, nor any description of land was given in the plaint. The suit was decreed vide judgment and decree dated 01.02.1995 after proceeding *ex parte* against the defendants. The suit of the plaintiff was decreed for recovery of Rs.1,71,270/- with costs and future interest @ 12% per annum from the date of filing of the suit till realization of the decretal amount.

[4]. Before the aforesaid decree, the order passed by the trial Court on 27.08.1993 was to the following effect:-

> "*I have heard the Ld. Counsel for the Plaintiff on the application u/o 38 Rules 5 and Section 151 CPC moved by the Plaintiff along with the main suit. In view of the facts mentioned in the application, defendants are ordered to show cause why their property be not attached before judgment until and unless they furnish surety bonds in the sum of Rs.2 lac. However, in the mean time, the defendants are restrained from alienating the suit property till further order.*"

[5]. Perusal of the aforesaid order shows that a show cause was issued to the defendants as to why their property be not attached before judgment. Restraint order *qua* alienation was passed. No suit property was mentioned in the aforesaid order, nor any attachment was done. Subsequently, as per record of the case, the interlocutory orders passed by the trial Court on 10.11.1993, 07.02.1994, 06.06.1994, 27.09.1994, 16.11.1994, 22.12.1994, 23.01.1995, 27.01.1995 and 01.02.1995, did not show that property was ever attached by the trial Court. Appellant purchased the property as per sale deed dated 14.12.1995 from M/s Rawat Steels and M/s Rawat Steels had purchased the aforesaid property measuring 2 *Kanals* vide registered sale deed dated 09.08.1990 from Kesar Dass son of Mohinder Dass comprised in *Khasra* No.75//13-17 as per

jamabandi for the year 1986-87 in village Dhandari Kalan. The purchase of land was prior to the filing of the civil suit. At the time of filing of the suit, the ownership of the land in question was with M/s Rawat Steels.

[6]. There was a partnership deed dated 24.09.1984 amongst Kashmir Lal, Manju Bansal, Raj Kumar and Naresh Kumar. According to the aforesaid partnership Raj Kumar was having interest in the firm to the extent of 35% in the sharing of profit, Kashmiri Lal was having 20% share in the profit, Manu Bansal was having 35% share in the profit and Naresh Kumar was having 10% share in the profit. There was no resolution of aforesaid firm till date, nor any rendition of account was ever sought by anyone.

[7]. Learned Senior counsel for the appellant submitted that there was no order of attachment on record. The *zimni* order dated 27.08.1993 and subsequent orders passed by the trial Court from 10.11.1993 till the decree in the suit did not show that the property in question was ever attached by the Court. The stay alienation granted by the trial Court had culminated with the passing of the decree dated 01.02.1995. Suit property was not defined with reference to any particulars. Neither the property of M/s Rawat Steels was ever included in the subject matter of suit for recovery, nor M/s Rawat Steels was made ever

party to the suit. The suit was simpliciter for recovery of money for which no collateral property was ever shown *qua* which the amount could have been recovered. M/s Rawat Steels is a registered firm having its independent identity. The property in question was owned by M/s Rawat Steels from whom the objector had purchased. M/s Hari Om Steel Traders was made party to the suit with Raj Kumar. Share of Raj Kumar in the firm was only to the tune of 35% in the profit. Even such 35% being in a co-sharership could not be defined anywhere for want of separation of share at any point of time. No attachment of the land could be presumed.

[8]. Learned Senior counsel further highlighted that a crude attempt was made by the decree-holder on the basis of sale deed dated 18.10.1994. After filing of the suit, the plaintiff alleged to have purchased the land of wife and brother of Raj Kumar. Raj Kumar himself was attesting witness to the aforesaid sale deed. Thereafter in the present suit proceedings, he very conveniently remained absent and was proceeded against *ex parte*. The 35% sharing by Raj Kumar in the profit cannot be taken to be a share in the land, because ownership was with M/s Rawat Steels, which was not made party to the suit. Even the executing Court did not take notice of the fact that there was no ownership of Raj Kumar in the suit land and the

sale deed was in favour of M/s Rawat Steels and subsequently in favour of appellant/objector. These sale deeds were never set aside. Decree-holder at the most could have proceeded against Raj Kumar. Mutation had already been sanctioned in favour of the appellant on 31.05.1996. Even as per bailiff's report, there was no property in the name of Raj Kumar at the relevant time.

[9]. On the strength of abovesaid argument, learned Senior counsel submitted that the executing Court has not adverted to the aforesaid material while dismissing the objections filed by the appellant and the same was illegally upheld by the Appellate Executing Court.

[10]. Learned Senior counsel further submitted that if the possession has been taken by the decree-holder in execution, the appellant is entitled for restitution of the same as the execution could not have proceeded on the basis of inherent lacuna on record. He relied upon statement of OW-3 Manjit Singh, Sadar Kanungo, who has specifically stated that as per *jamabandi,* M/s Rawat Steels was shown to be the owner till date. There was no material available on record to hold that the sale deed dated 22.12.1995 was forged or fraudulent in any manner.

[11]. Learned counsel for the respondents however opposed

the contention of the learned Senior counsel for the appellant and submitted that Raj Kumar was partner in the property of M/s Rawat Steels and was having share to the tune of 35%. The property was not owned by the objector. The objections filed by the objector were barred under Section 52 and 53-A of the Transfer of Property Act as the property was transferred in favour of the objector only to frustrate the decree.

[12]. I have heard learned counsel for the parties.

[13]. The perusal of the material on record is suggestive of the fact that there was no attachment of the property of M/s Rawat Steels at any point of time. M/s Rawat Steels was never made party to the suit. There was no separation of interest amongst the partners of M/s Rawat Steels, nor any rendition of account was ever sought. The stay regarding alienation granted by the trial Court on 27.08.1993 had culminated with the passing of decree dated 01.02.1995. The suit property was never defined in the plaint, nor the property of M/s Rawat Steels was included. The suit was simpliciter a suit for recovery of money. M/s Rawat Steels was having independent identity and the suit was filed only against M/s Hari Om Steel Traders and Raj Kumar, who was shown to be the sole property of the said firm.

[14]. In view of above, the execution cannot proceed against the property which was once owned by M/s Rawat Steels and subsequently by the appellant. All these issues were to be adverted by the executing Court in the objections filed by the objector/appellant. Since the suit was for the recovery of money, where no description of land was given and M/s Rawat Steels was not party to the suit, thereafter execution cannot proceed against the property of M/s Rawat Steels which was subsequently purchased by the objector/appellant. Even the said property was not attached by the executing Court at any point of time.

[15]. In view of observations made above impugned orders are set aside. This appeal is partly accepted and *qua* the share of 35% alleged to be recorded in the name of Raj Kumar in the partnership, for which the case is remanded to the executing Court to determine whether Raj Kumar was having 35% of sharing in the profit of the firm or was entitled to the property of the firm. In case Raj Kumar is found be owner of the property to the extent of 35%, then executing Court would decide the execution afresh to the extent above in accordance with law.

[16]. The decree holder would be at liberty to execute the decree in respect of other properties belonging to the judgment debtors as per law.

[17]. The objector/appellant would be at liberty to seek restitution of possession, if delivered in execution, in accordance with law.

[18]. Appeal stands disposed of.

July 14, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No