

ESA No.34 of 2015 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Sr. No.101

ESA No.34 of 2015 (O&M)  
DECIDED ON: April 20, 2017

JARNAIL SINGH

..APPELLANT

VERSUS

SURINDER KAUR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ajay Singla, Advocate,  
for the appellant.

Mr. Sarju Puri, Advocate,  
for the respondent.

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JASPAL SINGH, J.

Challenge in this appeal is to the order dated April 25, 2013 of Additional Civil Judge (Sr. Divn.), Shaheed Bhagat Singh Nagar (Nawashahr) whereby an objection petition preferred by the petitioner during the pendency of execution application No.4/04 captioned as *Surinder Kaur and another vs. Jarnail Singh* for implementation of judgment and decree dated May 07, 2005 was dismissed as well as judgment dated March 16, 2015 whereby an appeal preferred before lower

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Appellate Court was dismissed by learned Additional District Judge, Shaheed Bhagat Singh Nagar, Nawashahr.

2. Undisputably, the facts giving rise to the instant appeal are that respondents had filed a suit for recovery of Rs.1,50,000/- as an indigent person for arrears of maintenance @ Rs.1500/- p.m. for each from January 02, 2001 till November 01, 2004 against Jarnail Singh. During proceedings of the said case, compromise Ex.C-1 was arrived at between the parties with intervention of respectables which was signed and thumb marked by the parties and witnesses by various respectables. On the basis of the said compromise certified copy of Annexure C-1, suit was decreed in the Lok Adalat to the following facts which reads as under:-

*“Present: Parties with counsels.*

*File was taken up today in the Lok-Adalat on the application earlier moved by the applicant-Surinder Kaur. Statement of parties recorded today. The parties shall remain bound by their statements, as per compromise deed Ex.C1. In view of the compromise, Ex.C1, the appeal of the plaintiff/applicant stands disposed-off accordingly. Memo of costs be prepared and file be consigned to the record-room.*

*(Member)*

*Presiding Officer  
Lok-Adalat/7.5.05.”*

3. Since, aforesaid judgment and decree passed on the basis of compromise was not complied with by judgment-debtor, respondents/decreed-holders were constrained to file an execution application. During the pendency of which, Local Commissioner was appointed who on behalf of judgment/debtor got executed two sale deeds one in respect of land measuring 17K 2M 5½ sarsahi situated at village Masani, Tehsil Phillaur, District Jalandhar and other in respect of land

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measuring 03K 01M 3¼ sarsahi, situated at village Chahal Kalan. In other words, land measuring 20K 03M 8¾ sarsahi was transferred in favour of decree-holder located in two different villages which was the ownership of Jarnail Singh-judgment-debtor. Thereafter, petitioner Ajmer Singh son of Jarnail Singh-decree-holder (since deceased) preferred an objection petition on the ground that as per compromise Ex.C-1 arrived at between Jarnail Singh and Surinder Kaur and another, only land measuring 16K owned and possessed by Jarnail Singh was to be transferred in the name of decree-holders-Surinder Kaur and her son Harbinder Singh whereas they got the sale deed executed in respect of land measuring 20K-03M 8 ¾ sarsahi, which is against the decree dated May 07, 2005 passed on the basis of compromise Ex.C1. Another ground raised by the objector/petitioner before Executing Court was that as per terms and conditions of compromise, Surinder Kaur was obliged to withdraw the litigation from courts pending at Nawashahr and Phillaur but she did not withdrew those cases in compliance of terms and conditions of compromise. As such, judgment passed on the basis of compromise Ex.C1 has rendered redundant and is nothing but a nullity and cannot be acted upon. However, after hearing learned counsel for the parties and appraisal of evidence, aforesaid objection petition was dismissed vide impugned order dated April 25, 2013. An appeal preferred against aforesaid order dated April 25, 2013 met the same fate and was dismissed vide order dated March 16, 2015 passed by learned Additional District Judge, Shaheed Bhagat Singh Nagar (Nawashahr), which necessitated the filing of instant appeal.

4. Assailing the impugned judgments/orders, it has been

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apparently argued by learned counsel for the appellant that same are not in consonance with evidence and settled canons of law. Mis-appreciation of evidence as well as legal proposition has resulted into miscarriage of justice.

5. Admittedly, compromise Ex.C-1 was arrived at in between Surinder Kaur and her son Harbinder Singh with Jarnail Singh with the intervention of respectables. But in pursuance of said compromise, only land measuring 16K situated at Village Masani or Chahal Kalan was to be transferred in the name of decree-holders-Surinder Kaur and her son Harbinder Singh but due to mis-representation of facts and playing fraud upon Executing Court, decree holders/respondents No.1 & 2 succeeded in getting sale deed executed and registered in their favour in respect of land measuring 20K 3M 8¾ sarsahi i.e. against letter and spirit of the compromise. Moreover, as per terms and conditions of compromise, Surinder Kaur also did not withdraw the litigation pending at Shaheed Bhagat Singh Nagar (Nawashahr) as well as at Phillaur meaning thereby that compromise was not acted upon. Thus, judgment dated May 07, 2005 passed on the basis of compromise Ex.C1 is a nullity and non est of the eyes of law. Decree-holders/respondents cannot derive any benefit from aforesaid judgment. As such, impugned orders/judgments being against facts as well as law are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal.

6. On the other hand, learned counsel for the respondent has supported the impugned orders submitting that same are absolutely in consonance with evidence as well as legal proposition applicable to the facts and circumstances of the case. Each and every aspect has been dealt

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with by courts below in a very judicious manner. As such, same do not call for any interference by this Court. Accordingly, he prayed for dismissal of appeal.

7. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of evidence as well as scrutinizing the impugned judgments/orders passed by both the courts below, this Court does not find any legal and factual substance in the various submissions made by the learned counsel for the appellant.

8. Concededly, Jarnail Singh was the owner of property in suit who has breathed his last after passing of judgment and decree dated May 07, 2005 on the basis of compromise Ex.C1 arrived at between him and his wife Surinder Kaur and her son Harbinder Singh. The crucial question which requires determination in the case in hand is whether Jarnail Singh was obliged to execute the sale deed in respect of land measuring 20K 3M  $8\frac{3}{4}$  sarsahi being  $\frac{1}{3}$ <sup>rd</sup> share of the land owned and possessed by him located at village Masani and Chahal Kalan or that he was only to transfer land measuring 16K. Judgment and decree dated May 07, 2005 has been admittedly passed on the basis of compromise Ex.C1. Though, it has emerged in the statement of Jarnail Singh recorded before Lok Adalat held on May 07, 2005 that a compromise has been effected with Surinder Kaur, copy of which is Ex.C1. But it has emerged in his statement that according to the compromise, he will execute the sale deed of land measuring 16K in favour of Harbinder Singh son of Balbir Singh and after transfer thereof, Surinder Kaur and Harbinder Singh shall not be entitled to receive any maintenance from him and further that parties shall be bound by the

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compromise Ex.C1.

9. Here it would be pertinent to mention that a glance at the compromise Ex.C1 makes it crystal clear that Jarnail Singh agreed to transfer 1/3<sup>rd</sup> share of the land owned and possessed by him located at Village Masani. It was clearly reflected in compromise that if it falls short of his 1/3 share, land be given from side of road going towards Village Chahal Kalan whereas 1/3<sup>rd</sup> share of the land will be given to Ajmer Singh from land known as “Chokra land”. Thus, there is not even a slightest reference in the compromise Ex.C1 that sale deed would be executed or that land will be transferred only to the extent of 16K. In fact, compromise is the basis of judgment dated May 07, 2005. According to the compromise, land measuring 20K 03M 8¾ sarsahi stood transferred during execution proceedings in favour of aforesaid Harbinder Singh. The mere fact that other cases have not been withdrawn does not mean that compromise or decree dated May 07, 2005 have rendered nullity or unenforceable especially when civil court was still seisin of the matter. On the basis of compromise as well as decree dated May 07, 2005, the litigation did not come to an end as the sale deed was not executed by Balbir Singh in pursuance of compromise Ex.C1 or after his demise by Ajmer Singh-objector/petitioner. Since parties were still litigating, the question of withdrawal of suits/litigation pending at Shaheed Bhagat Singh Nagar (Nawashahr) and Phillaur does not arise. This Court is of the considered view that aforesaid sale deeds have been rightly got executed by Executing Court. As far as objection raised by petitioner are concerned, same are without any legal and factual substance and have rightly been set

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aside/quashed by learned Executing Court. Similarly, dismissal of appeal vide judgment dated March 16, 2015 is legally and factually justified. The orders/judgments passed by both the courts below, being perfectly in accordance with law and evidence do not call for any interference by this Court.

10. As a sequel of the aforesaid discussion, this Court does not find any merit in the instant appeal. As such, same is dismissed, whereby impugned judgments/orders passed by both the courts below are upheld.

11. No order as to costs.

April 20, 2017

Ankur

(JASPAL SINGH)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No