

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 105

ESA No.211 of 2016 (O & M)
Date of Decision: May 02, 2017

Kuljit Kaur

..... APPELLANT

VERSUS

Mandir Braham Kund

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. D.K. Bhatti, Advocate, for the appellant.

. . .

Jaspal Singh, J

1. Through the instant appeal, appellant – objector has challenged order dated November 17, 2014 passed by the Rent Controller, Jalandhar dismissing the objections preferred by her during pendency of execution petition viz. Ex 43 of 2011 for implementation of ejectment order dated February 28, 2002. An appeal preferred against order dated November 17, 2014 was also dismissed by learned Additional District Judge, Jalandhar vide order dated August 11, 2016. Aggrieved against aforesaid orders passed by the courts below, appellant – objector has preferred the instant appeal.

2. Undisputably, ejectment application No.226 instituted on March 01, 1994, captioned as ‘Mandir Braham Kund vs. Swaran Singh (deceased) represented by his LRs namely Satnam Singh & others’ which was allowed vide order dated February 28, 2002. Since Judgment Debtor did

not comply with the aforesaid order passed by the Rent Controller, Decree Holder i.e. Mandir Braham Kund was constrained to file an execution application for implementation of ejectment order dated February 28, 2002. During the pendency of aforesaid execution application, appellant – objector filed an objection petition, inter-alia on the ground that Suresh Sehgal who has obtained the ejectment order, is neither President of the Trust nor there is any trust under the name of Mandir Braham Kund Trust and the decree has been obtained by Suresh Sehgal in collusion with JDs and by misrepresentation and fraud; that neither JDs were in possession of suit property at any point of time nor they are in possession at present, rather the objector is in actual physical possession of the shop and ownership of property in question lies with Municipal Corporation, in which, the objector is carrying on her business; and that decree/order of ejectment in question is not binding upon the rights of the objector.

3. After hearing and considering the documents available on file, objection petition was dismissed vide order dated November 17, 2014 by the executing court and appeal preferred against the said order was also dismissed by the lower appellate court vide order dated August 11, 2016 which necessitated the filing of present appeal.

4. Challenging the impugned order passed by the courts below, learned counsel for the appellant has contended that the same are absolutely against the evidence available on file and settled canons of law. Infact, ejectment order dated February 28, 2002 has been obtained by respondent No.1 – Decree Holder by playing fraud upon the court and misrepresentation of facts. Otherwise also, it is a result of collusion between Suresh Sehgal who proclaimed himself to be the President of Trust and JDs who did not opt

light of the day for a period of more than nine years. The execution application was filed in the year 2011 but this Court does not find any legal weight in the aforesaid submission made by learned counsel for the appellant for the simple reason that she has got no right or locus standi to challenge the ejectment order or locus standi of Suresh Sehgal through whom the ejectment petition was filed on behalf of Mandir Braham Kund Trust. Though, appellant has claimed herself to be owner in possession of the shop in question but to the utter surprise, she could not bring on record any cogent or convincing evidence in this regard. She is unable to establish either her ownership or her possession over the disputed premises. There is also nothing on record to suggest that shop in question is ownership of the Municipal Corporation or that the disputed shop is being run by the appellant – objector. She has absolutely failed to connect the photocopy of the receipt allegedly issued by the Municipal Corporation, Jalandhar in favour of M/s Yours Boutique. There is no document on record in which the appellant figures either as proprietor or owner of the aforesaid Boutique.

5. During the course of arguments, learned counsel for the appellant also submitted that issues were not framed by the learned executing court after the objection petition was filed. Since the question of ownership/title was involved, executing court should have framed issues to determine the ownership which has not been done in the instant case, on account of which, appellant could not lead evidence.

6. This Court has given a deep thought to this submission made by learned counsel for the appellant – objector but finds the same to be without any legal or factual substance.

7. No doubt, framing of issues is a very important stage in civil

attention must be bestowed while framing issues but the non-framing of issues does not vitiate the proceedings or the order passed after hearing the parties. Here, it would be significant to mention that each case has to be decided from its particular facts and circumstances. In the instant case, executing court did not find to frame the issue(s) with regard to ownership or possession of property in question. The impugned orders have been passed after hearing the parties, that too, allowing them to adduce documentary evidence. Moreover, objections preferred during the execution application, are to be decided summarily where the court is of the view that framing of issues is likely to delay and defeat the execution of decree. Otherwise also, it is well settled proposition of law that proceedings for setting aside the decree, proceedings for restitution, proceedings for execution and proceedings for permission to sue as an indigent person, are illustrative of summary proceedings which are governed by the Code, where issues are not framed. However, in summary proceedings, the opposite party is to be given opportunity to file objections or written statement. Adverting to the facts of the case in hand, there was no necessity for framing of issues. Otherwise also, parties were aware of the rival cases and thus, non-framing of issues is not prejudicial to the appellant – objector. Moreover, such an objection was also not taken by the appellant – objector either before executing court or before the lower appellate court while addressing arguments.

8. Though, it has been alleged by learned counsel for the appellant that impugned orders are result of fraud and misrepresentation or collusion of Decree Holder with JDs, but to the utter surprise, no particulars of fraud or misrepresentation have been unfolded by the appellant – objector in the objection petition, nor there is any glaring circumstance to reflect the collusion in between the parties to the ejectment petition.

9. Taking into consideration the aforesaid aspects as well as discussion, this Court is of the considered view that there is no infirmity, illegality or perversity in the impugned orders passed by the courts below and the same are absolutely in consonance with the documents available on file as well as settled canons of law.

10. As a sequel to the aforesaid discussion, the instant appeal being devoid of merits is dismissed with no order as to costs.

May 02, 2017
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No