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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Misc. No.13851-C of 2016 in/and  
ESA No.214 of 2016(O&M)  
Date of decision: 15.2.2017

Meer Singh

...Appellant

**Versus**

Rohtash Singh @ Pawan Kumar and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr. Rakesh Nehra, Advocate for the appellant.

Mr. Vijay Kumar Sheoran, Advocate for the Caveator.

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**G.S.SANDHAWALIA, J. (Oral)**

**Civil Misc. No.13851-C of 2016**

Prayer made in the present Civil Misc. Application for granting exemption from filing certified copies of order dated 18.9.2015 passed by the Addl. Civil Judge (Senior Division), Loharu and judgment dated 8.9.2016 passed by the Addl. District Judge, Bhiwani and grounds of appeal is allowed.

The Civil Misc. Application stands disposed of accordingly.

**ESA No.214 of 2016(O&M)**

The present appeal is directed against the order dated 18.9.2015 passed by the Addl. Civil Judge (Senior Division), Loharu whereby objections of the present appellant father of the judgment debtor have been dismissed and the order dated 18.9.2015 was upheld by the Addl. District Judge, Bhiwani on 8.9.2015.

A perusal of the paper-book would go on to show that a suit for

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specific performance was decreed vide judgment and decree dated 5.12.2012 against Amit respondent no.2 who is son of the present appellant for a sum of ₹ 15 lakhs along with interest in view of the fact that he had entered into an agreement to sell/mortgage deed of 24 Kanals 13 Marlas of land dated 9.8.2010 and the appeal preferred by Amit against the said judgment and decree dated 5.12.2012 was dismissed. His objections were dismissed on 31.3.2014 and warrant of sale was issued as per schedule and the land was attached on 21.7.2014. Thereafter, the present appellant had filed a suit on 23.3.2015 against his two sons and decree holder challenging the release deed dated 5.7.2010 which he had executed in favour of his son on the basis of which mutation had also been entered on 22.7.2010 and apparently on the basis of the same, his son Amit had entered into an agreement to sell/mortgage which led to passing of the money decree. The objections were dismissed by the Executing Court on 18.9.2015 while noticing that objections of the Judgment Debtor had already been dismissed. Thereafter, in appeal, Addl. District Judge, Bhiwani has also upheld the reasoning given by the trial Court.

Counsel for the appellant vehemently submits that the release deed as such was a subject matter of the civil suit and therefore, attachment and sale of the land in question in pursuance of the money decree is not justified since the release deed had been got done malafidely by the son.

The said argument is not liable to be accepted. In the present case, sequence of events would go on to show that the father had made no effort to challenge the said release deed for a period of 5 years. The suit for specific performance had been filed on 2.5.2011 and was decreed on

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5.12.2012 for recovery by accepting the plea of the defendant that it was a loan transaction. In spite of that the father opted not to prefer any suit and objections were filed on 15.1.2013 which have now been dismissed vide order dated 18.9.2015. Thereafter, as noticed the warrants of attachment were issued and objections of the son were dismissed on 31.3.2014 and attachment of the land in question was done on 21.7.2014.

Counsel for the Caveator/Decree Holder has brought to the notice of this Court that the present appellant had filed civil suit on 23.3.2015 against his two sons and decree holder and in that suit immediately one of the son, namely, Anil Kumar, defendant no.2 had given a statement on 23.4.2015 that he had no objection in maintenance of the status quo. The decree holder had been arrayed as defendant no.3 but a perusal of the order dated 31.7.2015 would go on to show that summons could not be issued to him for want of summons and copies etc. and he had only put in appearance on 8.9.2015. The Trial Court noticed that status quo would be only regarding defendant no.2 and the order of status quo was not to be applicable to respondent-decree holder. Merely because the appellant has filed a Civil Suit challenging the release deed, the execution proceedings of sale of the property for recovery of ₹ 15 lakhs is not liable to be stayed. The conduct as such of the appellant would go on to show that even though he was aware of the attachment proceedings, the civil suit had been filed after considerable delay of seven months which had also been noticed by the Appellate Court.

The argument raised that issues were not framed as such and the objections were dismissed by the Executing Court is not liable to

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accepted as the appellant's rights as such to challenge the release deed is still to be adjudicated upon. The son had executed an agreement to sell dated 9.8.2010 on the basis of the said release deed which was never challenged for a period of five years from the said date and even mutation had also been entered in favour of the son. In such circumstances, there was no triable issue as such which arose before the Executing Court and therefore the impugned orders would warrant no interference in the revisional jurisdiction by this Court.

In **Bikram Singh Vs. Surjit Singh 2005(1) CCC 374**, it has been held that it is not necessary to frame issues and grant opportunity to lead evidence where frivolous and vexatious applications are filed to delay and defeat the execution proceedings. The relevant observations read as under:-

It may be stated that the petitioner has no vested right to insist that the executing court must frame issues before the execution proceedings are adjudicated upon. It is the duty of the executing court to execute the decree and merely because frivolous and vexatious objections are filed with a view to delay and defeat the execution of the decree, it is not necessary that the court must frame issues and grant opportunity to the parties to lead evidence. That will defeat the very purpose of the statute. This court has an occasion of deal with such an argument in **Rocky Tyres V Ajit Jain, 1998(2) RCR (Civil) 17 (P&H) : (1998-3)120 P.L.R. 53** and held that the purpose of granting an opportunity to prove his case to an objector while entertaining objections under Section 41 read with Order 21 Rules 97 to 108 of the Code of Civil Procedure does not amount to permission for misuse the process of law of court. The discretion must be exercised by the Court in such cases, of course, the discretion is

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governed by certain principles and must be exercised within four corners of law but such a discretion cannot be termed as a mere routine exercise of judicial discretion. The Court held to the following effect.

"14. It is settled principle of law that it is not incumbent upon the executing court that it must put to trial every objections which are filed in any execution proceeding, even if prima facie they appear to be frivolous, vexatious and are only intended to delay the execution and frustrate the procedure of law or where it amounts to an abuse of the process of the court. In this court in execution Second Appeal No. 2333 of 1996, **Bhagwan Singh and Ors. v. Parkash Chand**, decided on 7.11.1996. The Court after detailed discussion and following the principles enunciated by the Hon'ble Supreme Court of India in the cases of **Babu Lal v. Raj Kumar**, 1996(2) RRR 109 (SC) : J.T. (1996) 2716, **Munshi Ram and Ors. v. Delhi Administration**, A.I.R. 1968 Supreme Court 702, **B. Gangadhar v. B.G. Rajalingam**, A.I.R. 1996 S.C. 790 : 1995(3) RRR 1888 (SC) and noticing judgments of various High Court held as under:-

"Now, for considerable period it is not only the judicial trend which has declined to interfere to protect unlawful possession or possession of ranked trespasser etc., but, on the other hand, judicial anxiety has been to give effective relief to the successful parties by expeditious execution of decrees in favour of the parties. Unnecessary prolongation of litigation sometimes results even in frustrating the decree itself, such attempt on the part of the objector to frustrate a decree is a mischief which has to be prevented by due process of law and expeditious decision of such ill-founded and frivolous objections would also be in the

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interest of justice and within the permissible field of jurisdiction of the execution."

"If frivolous objections of the present kind are permitted to unreasonably and unnecessarily prolong the delivery of possession to a decree holder in accordance with law, it would certainly amount to putting a premium on abuse of process of law."

Thus the carnal (cardinal?) principle of law that follows is that the purpose of granting an opportunity to prove his case to an objector while entertaining objections under Section 47 read with Order 21 Rules 97 to 108 of the Civil Procedure Code does not amount to permission for abusing the process of law or court. The discretion must be exercised by the Court in such cases. Of course discretion is governed by settled judicial principles and must be exercised within four corners of law, but such a discretion cannot be termed as a mere routine exercise of judicial discretion. Either way it should be for well founded and settled principles governing the subject."

Accordingly, the present appeal is dismissed.

**February 15, 2017**  
**Pka**

**(G.S.SANDHAWALIA)**  
**Judge**

Whether speaking/reasoned  
Whether reportable:

Yes/No  
Yes/No