

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 108 + 274

ESA No.25 of 2016 (O & M)
Date of Decision: February 09, 2017

Jaswinder Pal & others

..... APPELLANTS

VERSUS

Vikas Kumar & others

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. Onkar Rai, Advocate, for the appellants.

Mr. Rakesh Gupta, Advocate, for respondent Nos.1 and
2.

. . .

Jaspal Singh, J

CM No.1715-C of 2017

Application is allowed as prayed for.

ESA No.25 of 2016 (O & M)

1. The instant appeal is directed against judgment/order dated February 04, 2016 passed by the Additional District Judge, Jalandhar dismissing an appeal against order dated January 28, 2015, whereby objections preferred by the appellants – objectors have been rejected/dismissed in an execution application for satisfaction/implementation of judgment & decree dated August 03, 2006 which has attained finality.

2. Claim of the objectors in the execution is that Parkasho, respondent No.3 – JD was not exclusive owner in possession of the suit property, so she has no right to enter into agreement to sell with Decree Holders. Infact, they alongwith Smt. Parkasho and their two other brothers namely Tilak Raj and Surinder Pal constituted a joint Hindu family. They all are joint in food, mess, residence and funds. Earlier, Chanan Ram, father of objectors being the karta of residential house was the head of joint family who owned and possessed the residential house located within the abadi of village Nangal. After the demise of Chanan Ram, father of appellants – objectors, their brothers Tilak Raj and Surinder Pal are residing in the said residential house. Respondent No.3 – JD Parkasho had only 1/7 share in the aforesaid house. However, she by playing fraud and mis-representation of actual facts, shown herself to be exclusive owner of house in question. It has further been claimed by the objectors that judgment & decree dated August 03, 2006 passed by the trial court is the result of collusion between Decree Holders and JD Parkasho. The objectors have further averred that executing court has passed order dated January 28, 2015 without framing any issue and affording proper opportunity to lead evidence and their objections were dismissed summarily. After hearing learned counsel for the parties and appraisal of documents available on file, executing court dismissed the objections vide order dated January 28, 2015. An appeal preferred against the said order of dismissal of objections was also dismissed vide impugned judgment dated February 04, 2016 passed by the Additional District Judge, Jalandhar. Aggrieved against the aforesaid judgment and order, appellants – objectors have preferred the instant petition.

3. Assailing the impugned judgment/order, learned counsel for the appellant has reiterated the versions contentions in the objection petition

and has submitted that non-application of judicious mind and misinterpretation of legal proposition of law has resulted into miscarriage of justice. Infact, the objections had been preferred by the appellants under Order XXI Rules 97, 99, 101 and Sections 47 & 151 CPC. The rejection of 3rd party objections to a decree is appealable. thus, all the questions arising between the parties to a proceeding on an application under Rule 97 of Order XXI CPC should be determined by the executing court and the same are to be dealt with and disposed of just like a suit, that too, after affording an opportunity of being heard to both the parties as well as to lead evidence after framing of issues in respect of their respective claims. In the instant case, the executing court has failed to cull out the issues and has dismissed the objections summarily. The non-framing of issues has resulted into miscarriage of justice and has caused a serious prejudice to the appellants – objectors.

4. It has further been contended by learned counsel for the appellants that both the courts below have also fell in error while discarding various averments raised by the appellants – objectors in the objection petition to the effect that disputed property in the hands of Chanan Ram, predecessor-in-interest of the objectors was a joint Hindu family coparcenary property and further that all the members of the family are joint in food, mess and residence. Further that the suit property i.e. house, was purchased by Chanan Ram with sale proceeds of another house vide sale deed dated February 16, 2001 from Mohan Lal son of Nand Lal (respondent No.2 – Decree Holder) for an amount of ₹ 66,000/- for the betterment of family and for better accommodation. As such, the disputed house also became ancestral joint Hindu family property of the objectors and the other legal heirs of Chanan Ram. JD – Parkasho had no right to either enter into an

agreement to sell or to sell off the disputed house. As such, impugned order/judgment are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal. Resultantly, the objections deserve to be allowed and execution dismissed.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellants and appraisal of documents available on file and scrutinizing impugned judgment/order, this Court does not find any legal as well as factual substance in the submissions made by learned counsel for the appellants as the same are otherwise against the real and actual facts.

6. Undisputably, prior to disposal of the objection petition, preferred by the appellants, no issue has been framed by learned executing court. But, an omission to frame issue(s) as required under Order XIV Rule 5 CPC would not vitiate the trial in a suit or proceedings where parties went to trial fully knowing the rival case. In case ***Kannan (dead) by Lrs and Ors vs. V.S. Pandurangam (dead) by Lrs. and Ors., AIR 2008 Supreme Court 951***, the Hon'ble Supreme Court while considering the contention seeking to set aside the judgment of the High Court on the ground that no substantial question of law was framed as required under Section 100(4) CPC, held that merely because no substantial question of law has been formulated by the High Court, does not automatically render a judgment nullity or that it must necessarily be set aside on the said ground. The party should also show prejudice caused to him on account of non framing of issues. The aforesaid judgment was relied upon by a Division Bench of Andhra Pradesh High Court in case ***T. Krishna Goud vs. Sabiha Kamaluddin, 2010(26) R.C.R. (Civil) 819***.

7. While interpreting the words “all questions arising between the parties to a proceeding on an application under Rule 97”, the Hon’ble Apex Court in case ***Silverline Forum Pvt. Ltd. v. Rajiv Trust and another, 1998(1) R.C.R. (Rent) 394: 1998(3) SCC 723***, has observed as under:-

“The words “all questions arising between the parties to a proceeding on an application under Rule 97” would envelope only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because of the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.”

This judgment was subsequently relied upon by the Hon’ble Apex Court in case ***N.S.S. Naraya Sarma vs. M/s. Goldstone Exports P. Ltd., 2001(1) R.C.R. (Civil) 752***. Relevant portion (Para 10) of the said judgment reads as under:-

“Under Rule 99(1) it is laid down “Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession”. Under sub-rule (2) thereof it is provided that where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions contained in the Code.”

8. In so far as the question of non-framing of issues regarding third party objections in this case is concerned, this Court in case ***Naresh Kumar vs. Narinder Singh & another, 2012(1) Civil Court Cases 378 (P&H)***, held that the executing court is to examine the weight of the third party objections filed in an execution application and the framing of issues and opportunity to lead evidence is not to be provided as a matter of course in all and every objection petition. This Court held that the objector is duty bound to establish a prima-facie case in his favour and to show that there is some merit in the objection so raised before he can claim trial on those issues by leading evidence. This Court also held that there is no need to frame issues when objections are prima facie frivolous, vexatious and intended to delay. To the same effect, is the judgment of this Court in August 03, 2006 ***Satish Kumar vs. Shanti Devi & others, 2008(4) Civil Court Cases 185***, wherein this Court held that there is no need to frame issues and to give opportunity to lead evidence to the parties where the facts are clear in third party objections, because doing so would result in delay. This Court has gone to the extent to hold that where objections are prima facie frivolous, vexatious and intended to delay, then they are not liable to be put to trial as it would tantamount to abuse of process of the court.

9. In the light of observations in the aforesaid authoritative pronouncements, this Court is of the considered view that non-framing of issues in the instant case is not prejudicial to the case of the objectors, especially in view of the evidence as well as facts & circumstances which are amply clear on record.

10. As far as the contention to the effect that house in question is joint Hindu family coparcenary property and at the most JD Parkasho was

Ram. A close scrutiny of judgment/order dated February 04, 2016 passed by the lower appellate court, the objectors placed on record certified copy of three sale deeds from which it became clear that Tilak Raj son of Chanan Ram sold his three sarsahi share in the said house to Jaila Ram son of Bhagat Ram vide sale deed dated August 26, 2000. The present appellants – objectors alongwith their mother Parkasho sold their 5/7th share in the said house vide sale deed dated February 16, 2001 to Decree Holder/plaintiff No.2. Subsequently, Jasvinder Pal son of Chanan Ram sold his 4 ½ sarsahi share in the said house to Harjinder Singh son of Gian Singh son of Thakur Singh, resident of village Nangal, vide registered sale deed dated December 15, 2003. The sale of shares by the objectors is suggestive of the fact that the property in suit stood partitioned and it is no more joint Hindu family coparcenary property. Similarly, there is ample evidence on record that the objectors are neither joint in mess nor in residence, rather, they are proved to have been residing separately on the basis of the documentary evidence available on file in the shape of ration cards etc.

11. The objection petition preferred by the appellants – objectors is nothing but a novel device adopted by them just to delay and defeat the decree dated August 03, 2006. The objection petition has rightly been dismissed by the executing court and similarly the appeal preferred against dismissal of the objections has also been rightly dismissed. There is nothing to interfere in the orders passed by the courts below which are under challenge, rather this Court is of the considered view that the same are absolutely in consonance with evidence available on file as well as settled principles of law.

12. As a sequel to aforesaid discussion, there is no merit in the instant appeal and the same is dismissed.

13. No order as to costs.

February 09, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No