104 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA No.19 of 2017 (O&M)
Date of decision: March 30, 2017

Talwinder Singh and another ...Appellants

Versus

Kulwinder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Surjit S. Swaich, Advocate
for the appellants.

JASPAL SINGH, J.

Instant appeal has been preferred against the order dated 25th November, 2016 passed by Lower Appellate Court whereby while dismissing an appeal vide order dated 3rd February, 2016 passed by the Executing Court has been upheld vide which an application moved by appellants-Talwinder Singh and Surinder Kaur for releasing the property measuring 4K-0M i.e. half share in the land Khewat No.98/98, Khatoni No.144, Khasra No.18//14 (8-0) and 17K-2 ½ M i.e. half share in the land comprised in Khewat No.109 having area of 34 K-5M situated in Village Hazipur, Tehsil Bassi Pathana, District Fatehgarh Sahib, has been dismissed.

While assailing the impugned order dated 25th November, 2016, it has been submitted by learned counsel for the petitioner that Civil Suit No.315-T of 3rd January, 2004 titled as *Kulwinder Singh Vs. M/s Sidhu Traders through its partners* for recovery was decreed by learned Civil

Judge (Senior Division), Fatehgarh Sahib and a decree for recovery of an amount of Rs.3,00,000/- along with interest @ 12% per annum from the date of execution of receipt i.e. 1st January, 2001 till the date of decree and future interest @ 6% per annum, was passed in favour of the plaintiff/decree holder and against the defendants in the said suit on 13th October, 2009. The decree holder filed an execution application on 9th January, 2010 for the execution of the aforesaid decree dated 13th October, 2009. During the pendency of the execution application, the Court directed the decree holder to submit the list of property of the judgment debtors for realization of the decreetal amount. However, instead of submitting the list of property of the judgment debtors, the decree holder has submitted the list of the property of the appellants. The Executing Court, without taking into consideration that the judgment debtors are not the owners of the property, passed an attachment order dated 14th August, 2013. Accordingly, vide Rapat No.429, an entry was incorporated in the *jamabandi* for the year 2012-13. Though, appellants have filed objections against the attachment of their aforesaid land. An application dated 18th April, 2015 was also moved before Executing Court for release of the attachment property but vide impugned order dated 3rd February, 2016, said application was dismissed by the Executing Court. An appeal preferred against the aforesaid order dated 3rd February, 2016 was also dismissed by the Lower Appellate Court vide its order dated 25th November, 2016 which necessitated the filing of the instant second appeal.

Challenging the impugned orders, the learned counsel for the appellants has submitted that in fact, both the Courts below have grossly erred by rejecting the application/objections preferred by the appellants against attachment of their property which are otherwise illegal, erroneous and perverse on their face itself and it has resulted into miscarriage of justice.

Learned counsel for the appellants has further submitted that there are four partners of defendant/judgment debtor firm i.e. M/s Sidhu Traders and all the due partners of the said firm have sufficient property for the satisfaction and full discharge of the decree dated 13th October, 2009 but instead of attachment and sale of the property of the judgment debtors, Executing Court has proceeded against the present appellants and has attached their property. Since the judgment debtors i.e. partners of M/s Sidhu Traders own other immovable property, decreetal amount can easily be recovered from the said property, without touching the property of the appellants. There is no reason, in the present case, to attach the property of the appellants, who are not the judgment debtors. They were also not party to the suit, in which, decree dated 13th October, 2009 was passed. Thus, impugned orders passed by the Courts below are not sustainable in the eyes of law and deserve to be *set aside*. Consequently, property owned or possessed by the appellants which stood attached as per the orders of Executing Court, deserves to be released from attachment.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants but find the same to be without any legal weight.

Undisputably, the judgment and decree under execution was passed by the Court on 13th October, 2009 and for the satisfaction of the said decree, an execution application was filed on 7th December, 2009. The respondents were ordered to be summoned for 9th January, 2010 i.e much prior to the date of transfer made by Ranjit Singh JD No.1 in favour of his wife and son. Ranjit Singh JD No.1 did not cooperate and evaded the service of notice issued by the Executing Court. Ultimately, he transferred the land owned by him in favour of the appellants vide sale deed dated 24th January, 2011 i.e. during the pendency of the execution application. Thus, this Court is of the considered view that Executing Court has rightly observed that the transfer of land is a nefarious design of JD No.1 Ranjit Singh to defeat the decree passed against him and in favour of decree holder. At the cost of repetition, it would be proper to mention here that the appellants are none-else but the real son and wife of Ranjit Singh JD No.1. Since the transfer of disputed property has been made during the pendency of the execution application that too, just to defeat the judgment and decree dated 13th October, 2009, an application for releasing the property from attachment preferred by the present appellants has rightly been dismissed by learned Executing Court. Similarly, an appeal preferred against the order dated 3rd February, 2010 passed by the Executing Court has also been rightly dismissed by the Additional District Judge, Fatehgarh Sahib, vide his order dated 25th November, 2016. The sale deed, if any ,executed by Ranjit Singh JD No.1 in favour of the appellants i.e. his wife and son is nothing but a sham transaction created just to defeat the decree dated 13th October, 2009. As such, appellants do not deserve to be heard even on merits being in collusion with father and husband, respectively.

In view of above, this Court does not find any merit in the instant appeal. There is also no question of law what to talk of any substantial question. Thus, the instant appeal being devoid of merits stands dismissed whereby the impugned orders dated 3rd February, 2016 and 25th November, 2016 passed by both the Courts below are upheld with no order as to costs.

March 30, 2017 **(JASPAL SINGH)**
m. sharma **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**