

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 123

ESA No.23 of 2017 (O & M)
Date of Decision: May 11, 2017

Harjot Singh & another

..... APPELLANTS

VERSUS

M/s Amrit Lal Sushil Kumar & another

..... RESPONDENTS

...

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

...

PRESENT: - Mr. P.S. Jammu, Advocate, for the appellants.

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Jaspal Singh, J

1. The instant appeal is directed against judgment dated March 04, 2017 passed by the Additional District Judge, Sirsa whereby an appeal preferred against order dated January 16, 2017 has been dismissed, upholding the same.

2. While assailing the impugned order/judgment, it has been ebulliently argued by learned counsel for the appellants that same are absolutely against evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition has resulted into miscarriage of justice. Infact, the impugned orders are based upon conjectures and surmises.

3. Learned counsel for the appellants has further contended that on basis of judgment & decree dated July 28, 2007 passed in civil suit

No.515 of 2007, titled 'Harjot Singh and another vs. Shingara Singh', the appellants have been declared to be owners in possession of the land in question i.e. much prior to passing of decree under execution. The suit titled 'M/s Amrit Lal Sushil Kumar vs. Chanan Singh' was filed on July 31, 2008 i.e. much prior to passing of the decree in favour of the appellants in which Shingara Singh, father of appellants was not a party to the said suit for recovery. Moreover, respondent No.1 – Decree Holder did not challenge decree dated July 28, 2007 vide which appellants have been declared to be owners in possession. Since the appellants have acquired the ownership of the land in suit much prior to filing of suit for recovery as well as passing of the decree therein, land in question cannot be attached for recovery of amount in question. Thus, impugned order dated January 16, 2017 whereby objections preferred by the appellants have been dismissed, is not sustainable in the eyes of law. Similarly, dismissal of appeal vide judgment & decree dated March 04, 2017 is also not legally and factually justified as such, the impugned order/judgment are liable to be set aside by way of acceptance of instant appeal.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant and perused the impugned order/judgment but does not find any merit in the submissions made by learned counsel for the appellants.

5. Undisputably, respondent No.1 – Decree Holder M/s Amrit Lal Sushil Kumar preferred a Civil Suit No.254 on July 31, 2008 against Chanan Singh, who is none else but brother of Shingara Singh and prior to that, appellants filed a Civil Suit No.515 of 2007, in which, Harjot Singh and another i.e. appellants obtained a decree in their favour by filing a suit

depicts that Civil Suit No.254 of 2008 was decreed vide judgment & decree dated September 12, 2012. As per the account books pertaining to the Financial Year 2005-06, JD – defendant in the said suit had acknowledged the debt i.e. ₹ 6,09,872/- on August 03, 2005 and in token thereof, he appended his thumb impression. This fact was also categorically admitted by him when he appeared in the witness box in support of his case and subjected to cross examination. Not only this, even he has admitted that he has authorized his son Shingara Singh to get various amounts in advance from the plaintiff – firm on his behalf. Even subsequent thereto, vide endorsement/acknowledgment, Ex.P1, Chanan Singh duly acknowledged outstanding dues qua him and his son Shingara Singh to the tune of ₹ 6,27,697/-.

6. Here it would be pertinent to mention that after receipt of legal notice from the Decree Holders, Chanan Singh transferred the land owned and possessed by him in favour of his son Shingara Singh on the basis of Mutation No.299 dated April 05, 2007 was sanctioned. Subsequent thereto, Shingara Singh transferred the said land in favour of his minor sons. All this appears to have been done by Chanan Singh and Shingara Singh just to defeat and delay execution proceedings and recovery of the amount in question which is outstanding against them on the basis of decree dated July 28, 2007. It is well settled principle of law that creditor can exercise his option to avoid a fraudulent transfer under Section 53 by attaching the transferred property in the execution of a decree. For that purpose, a regular suit is not necessary to avoid fraudulent transfer. To fortify this observation, we can have reference to judgment of this Court rendered in case **Smt.**

Shallo Devi and another vs. Mohinder Singh and others, AIR 1971 P&H

Baryam Singh vs. Rameshwar Dass and others, 1989(2) PLJ 218 (P&H)

wherein the land was transferred by a husband through a decree in favour of his wife being fully aware of the fact that he had taken a loan by executing a pronote. The suit filed by wife of Waryam Singh @ Baryam Singh was decreed much prior to filing of suit on the basis of pronote and receipt. In that situation, it was held by this Court that decree was not binding upon DH and it was nothing but a fraudulent transfer made by husband in favour of his wife just to delay and defeat the execution of decree. Thus, taking the case of appellants from any of the angles, this Court does not find any legal and factual substance. The impugned order/judgment passed by the courts below are absolutely in consonance with evidence available on file as well as settled proposition of law and as such, same do not call for any interference by this Court.

7. As an upshot of the aforesaid discussion, instant appeal being devoid of any merits is dismissed with no order as to costs.

May 11, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No