

ESA No.30 of 2017 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.123

**ESA No.30 of 2017 (O&M)
DECIDED ON: May 30, 2017**

KRISHNA RANI AND ANOTHER

..APPELLANTS

VERSUS

PARAMJIT SINGH AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rahul Sharma-I, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.7375-C of 2017

Application is allowed as prayed for.

Documents (Annexure A-1 & A-2) are taken on record subject
to all just exceptions and be tagged at appropriate place.

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The instant appeal has been directed by the petitioner/JD
feeling dissatisfied against the judgment dated May 06, 2017 passed by
Additional District Judge, Jalandhar dismissing an appeal against the order

dated September 08, 2015 passed by the learned Civil Judge (Jr. Divn.), Jalandhar whereby an objection petition preferred by the present appellants/objectors was dismissed.

2. The brief facts giving rise to the instant appeal are that decree-holder/respondent No.1 has filed an execution application for execution/implementation of judgment and decree dated April 24, 2002 for the recovery of possession of property in question against the judgment-debtor/respondent No.2. During the proceedings of the execution application, sale deed of the property in question in execution of the decree referred to above dated April 24, 2002 was executed in favour of the decree-holder through court. Thereafter, another execution application was filed by the decree-holder seeking possession of the suit property, during which, appellants/objectors filed objections inter-alia on the grounds that suit has been got decreed illegally and false claim has been got allowed; that decree holder has got no locus-standi to obtain a decree against the stranger in respect of the disputed property; that suit property is owned and possessed by appellants/objectors that neither the judgment debtor nor decree holder has got any right to deal with disputed property and that licensee has got no right, title or interest over property in dispute. However, aforesaid objections have been dismissed by the Executing Court terming the same to be frivolous and that the Civil Court cannot go beyond the decree.

3. Dissatisfied with the aforesaid order dated September 08, 2015, petitioner preferred an appeal before the learned District Judge, Jalandhar but that appeal was also dismissed vide order dated May 06, 2017.

4. The contention of the learned counsel challenging the

impugned orders is that both the courts below have totally ignored the law applicable to the facts and circumstances of the case in hand while passing the impugned orders. In fact, entire construction over five marlas of the property in question has been raised by the objector, out of their own pocket. The respondent No.2 was neither owner of the disputed property nor he was able to prove it by adducing evidence. In fact, decree holder as well as JD/respondent No.2 colluded with each other, on account of which, JD/respondent No.2 did not contest the suit and decree under execution was passed. Since the objectors are in possession of the disputed property and the decree has been obtained by the decree holder in connivance and in collusion with the judgment debtor, the same is un-executable and unenforceable. As such, impugned orders passed by both the courts below are not sustainable in the eyes of law and are liable to be set aside.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellants and appraisal of the impugned orders and evidence available on record, this court does not find any merit in the submissions made by the learned counsel for the appellants.

6. It is an undisputed fact that the respondent No.1-decree holder earlier filed an execution application against the judgment debtor/respondent No.2 for the execution of the decree dated April 24, 2002 and for delivery of possession of the property in question. The sale deed of the property in question in execution of the decree dated April 24, 2002 has already been executed through court, in favour of the decree holder-respondent No.1 on behalf of JD/respondent No.2. Through another execution application, decree-holder sought to obtain possession of the

property subject matter of the decree as well as the sale deed executed in his favour through court. During the pendency of said execution, objections were filed by the appellants/objectors. The appellants/objectors are no more owners of the property in dispute as it has already been transferred during the execution proceedings in favour of decree holder. The said sale deed has been executed on behalf of JD/respondent No.2. It is also well settled proposition of law that Executing Court cannot go beyond decree.

7. Here it would also be pertinent to mention that both the courts below have concurrently observed that a copy of voter list transpires that appellants/objectors are residents of 171-NM, Mohalla Karar Khan, Ward No.6, Jalandhar and from letter bearing No.852/HT dated March 24, 2015, it emerges that Municipal Corporation never reported regarding the house tax receipt to anyone by way of issuance of form TS-I. It appears that appellants/objectors have not approached this court with clean hands and have suppressed material facts. It is pretty settled that a person seeking equity must approach the court with clean hands and further that where a party is guilty of concealment of material facts and does not approach with clean hands is not entitled to discretionary relief. Even such party is not obliged to be heard on merits. To fortify the aforesaid observation we can have reference of the pronouncement of this Court made in case "*Somnath Versus Shri Mata Mansa Devi Puja Sathal 2000(4) RCR (Civil) 157*". Thus, this Court is of the considered view that objection petition has rightly been dismissed by learned Executing Court. Similarly, an appeal has also been rightly dismissed by the lower appellate Court concurring with the Executing Court.

8. In the light of what has been discussed above, this Court does not find any merit in the instant appeal, the same is dismissed, whereby impugned orders passed by both the courts below are upheld.
9. No order as to costs.

May 30, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No