

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

**ESA No.41 of 2017 (O&M)
Date of Decision: 08.08.2017**

Pardeep Kumar and another

.....Appellants

Vs

Joginder Singh and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Narender Pal Bhardwaj, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. This Execution Second Appeal has been preferred by the appellants against the order dated 11.07.2017 passed by Civil Judge (Sr. Divn.) Kurukshetra and order dated 24.07.2017 passed by the District Judge, Kurukshetra whereby objection filed by the appellants under Order 21 Rules 97 and 101 CPC were dismissed and the said order was affirmed in appeal.

[2]. Brief facts are that a civil suit for possession by way of specific performance and permanent injunction was filed by Joginder Singh against Tikka Ram on the basis of agreement to sell dated 08.07.2003. The said suit was filed on 18.05.2005. The suit was decreed vide judgment and decree dated

22.07.2010. Defendant was proceeded against *ex parte* on 23.03.2009 after filing written statement and framing of issues. Thereafter counsel for the defendant appeared at the time of arguments on 22.07.2010. Defendant did not lead evidence. Thereafter an application under Order 9 Rule 13 read with Section 151 CPC was filed by the defednant for setting aside the *ex parte* judgment and decree dated 22.07.2010. The execution was adjourned *sine die* till decision of the aforesaid application vide order dated 04.09.2015. The aforesaid application was dismissed by the Civil Judge (Sr. Divn.) Shahbad on 19.01.2017. Even the application under Order 28 of the Specific Relief Act was also dismissed on 08.05.2012. Consequently, sale deed was executed with the help of Local Commissioner. Balance sale consideration was deposited.

[3]. On 05.06.2006, the defendant Tikka Ram sold land measuring 9 *Kanals* to his daughter-in-law Seema Devi w/o Kuldeep Singh s/o Tikka Ram. Seema Devi in her turn sold 3 *Kanals 7 Marlas* of land on 09.09.2011 in favour of her sister-in-law Nisha Devi w/o Pardeep Kumar s/o Tikka Ram. Seema Devi again sold 3 *Kanals 6 Marlas* of land to her brother-in-law Pardeep Kumar s/o Tikka Ram on 27.09.2011. Nisha Devi in her turn mortgaged her 3 *Kanals 7 Marlas* of land in favour of Bank for an amount of Rs.4.5 lacs. The application under Section 28

of the Specific Relief Act was dismissed after noticing all the necessary facts. The objections were filed under Order 21 Rules 97 and 101 CPC.

[4]. Learned counsel for the appellants contended that the objections being 3rd party objections should have been decided after following proper procedure. Learned counsel referred to Rule 101 of Order 21 CPC and contended that all questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order 21 Rule 97 or Rule 99 CPC shall be determined by the Court after following proper procedure in the same proceedings.

[5]. Learned counsel referred to **S. Satnam Singh & Ors. vs. Surender Kaur & Anr., 2009(1) R.C.R. (Civil) 600; Yogender Kumar & another vs. Ram Kishan Gupta & another, 2011(8) R.C.R. (Civil) 647 (Delhi); N.S.S. Narayana Sarma vs. M/s Goldstone Exports P. Ltd., 2002(1) R.C.R. (Civil) 752; Tanzeem-e-Sufia vs. Bibi Haliman, 2002(4) R.C.R. (Civil) 1; Anwarbi vs. Pramod D.A. Joshi, 2001(4) R.C.R. (Civil) 697 and Noorduiddin vs. Dr. K.L. Anand, 1995 (1) CivCC 572** and contended the all questions relating to the right of a person like the objectors have to be dealt with in the same suit even by executing Court and not by a separate suit.

The right of obstructionist will have to be decided in an appropriate manner in accordance with law and the obstructionist cannot be disturbed except in due course of law.

[6]. I have heard learned counsel for the appellants.

[7]. The appellants are vendee *lis pendens*. The judgment debtor Tikka Ram after entering into agreement to sell with Joginder Singh sold the property firstly in favour of his daughter-in-law and daughter-in-law in her turn sold 3 *Kanals 7 Marlas* of land to her sister-in-law and 3 *Kanals 6 Marlas* of land to her brother-in-law on 09.09.2011 and 27.09.2011 respectively. The first sale deed by Tikka Ram in favour of her daughter-in-law Seema Devi was executed on 05.05.2006 i.e. during pendency of the suit. The sales dated 09.09.2011 and 27.09.2011 were made after the decree passed by the trial Court. It is a settled position of law that the right of vendee *lis pendens* has to be dealt with in terms of Order 21 Rules 102 CPC. Nothing in Rules 98 or 100 CPC shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of suit in which the decree was passed.

[8]. Apparently, the appellants/3rd party objectors are the vendee *lis pendens*, rather they have purchased the property even after passing of the decree on 22.07.2010. Tikka Ram lost the litigation in regular Forums. Thereafter in order to frustrate the decree, firstly he sold the property to her daughter-in-law Seema Devi w/o Kuldeep Singh s/o Tikka Ram on 05.05.2006 and thereafter Seema Devi sold the property in favour of her sister-in-law and brother-in-law and her sister-in-law even mortgaged the land measuring 3 *Kanals* 7 *Marlas* in favour of the Bank.

[9]. In **M/s Sunil Auto Service vs. Parikshant Suri and others, 2011(1) RCR (Rent) 452**, it was held that the executing Court is not obligated to try every objection which appears to be frivolous and vexatious by way of following proper procedure of framing issues and allowing the parties to lead evidence. Frivolous objections are not necessarily to be decided by way of proper procedure and the same can be rejected summarily.

[10]. In **Rana Mahajan and another vs. Shri Purshottam Krishan and others, 2014(2) RCR (Civil) 331** it was held that the resistance at the instance of a person having no locus should be treated to be mere attempt to delay the execution of the proceedings. Since the appellants are vendee *lis pendens*, therefore, their objections are not maintainable in view of Order

21 Rule 102 CPC. The attempt made by the appellants to frustrate the decree has to be considered to be an act to delay the execution proceedings.

[11]. In view of aforesaid facts, I find no fault in the impugned orders passed by the Courts below. This appeal is accordingly dismissed.

August 08, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No