

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

**ESA No.52 of 2017(O&M)
Date of Decision-24.10.2017**

Sube Singh deceased through his LRs and another ... Appellants

Versus

Mahabir and others

... Respondents

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

Present: Mr. K.S. Banyana, Advocate
for the appellants.

Mr. S.K. Jain, Advocate and
Mr. Deepak Jain, Advocate and
Mr. Akshay Jain, Advocate
for respondents No.1 to 8.

RAJ MOHAN SINGH, J.

[1]. Appellants have preferred this execution second appeal against the judgment dated 14.08.2017 passed by Additional District Judge, Jind and the order dated 13.01.2017 passed by Civil Judge (Senior Division), Jind being illegal and perverse.

[2]. Decree holders/respondents filed an execution of judgment and decree dated 09.01.1984 passed by Sub Judge, Ist Class, Jind on 20.01.2016. In the said execution, appellants/judgment debtors filed objections under Order 21 Rule 97(1) CPC on 02.07.2016. The objections were dismissed by the Executing Court/Civil Judge (Senior Division), Jind vide order dated 13.01.2017. The objectors/appellants remained unsuccessful in the

appeal before Additional District Judge, Jind which was dismissed vide judgment dated 14.08.2017.

[3]. Learned counsel for the appellants raised three arguments i.e.

- (1) execution is barred by limitation,
- (2) the allotment in favour of decree holders was cancelled by the competent authority, and
- (3) execution was the result of non-joinder of necessary parties and concealment of facts.

The civil Court decree dated 09.01.1984 was passed in favour of the decree holders in a suit under Section 6 of the Specific Relief Act. The land of the big land owners was declared surplus. Decree holders were the successors-in-interest of original allottee who was allotted land out of surplus pool being tenant.

[4]. The decree dated 09.01.1984 passed in the suit under Section 6 of the Specific Relief Act was challenged by the judgment debtors by way of separate civil suit for declaration. The suit was dismissed on 29.01.1987. The judgment debtors remained unsuccessful even in first appeal before the Lower Appellate Court, which was dismissed on 25.01.1989. Regular second appeals were filed before the High Court which were also dismissed on 31.08.2013. The dispossession of the judgment debtors remained stayed throughout by virtue of interim orders granted by the Courts.

At the relevant time, one civil writ petition was also pending in the context of surplus area of the big land owner. The civil writ petition was dismissed. L.P.A arising out of order in the civil writ petition was also dismissed by the Division Bench of the High Court. At the relevant time, S.L.P arising out of regular second appeals and order of L.P.A were taken cognizance of by the Hon'ble Apex Court and S.L.P was also dismissed.

[5]. Learned counsel for the appellants submitted that execution of the decree was never stayed by the Civil court or the Courts in hierarchy at any point of time. The argument cannot be appreciated inasmuch as that once the dispossession of the judgment debtors was stayed or the order of *status quo* was granted by the Civil Court, then consequent possession, even if, execution was filed was not to be disturbed. The consequent dispossession in the event of filing execution if stayed by the Court, then it has to be taken as if the execution was not to proceed during currency of stay of dispossession.

[6]. Regular second appeals were dismissed by the High Court on 31.08.2013. The opposite party remained unsuccessful in SLP before the Hon'ble Apex Court. The filing of execution on 20.01.2016 cannot be said to be beyond limitation.

[7]. Learned counsel further submitted that the allotment in favour of the decree holders was cancelled by the competent authority, therefore, decree in question could not be executed any

more. The decree holders did not implead State of Haryana as necessary party and the filing of execution was on account of concealment of facts.

[8]. Having considered the aforesaid submissions, I am of the view that the allotment of surplus area was made in favour of the eligible tenant. Predecessor-in-interest of the decree holders was one of such tenants in whose favour the allotment was made in the year 1963-64 by the State of Haryana. The possession was delivered. There was unauthorized activity of dispossession by the judgment debtors which ultimately resulted in filing of civil suit under Section 6 of the Specific Relief Act. The suit was decreed on 09.01.1984 and thereafter, judgment debtors challenged the said civil suit unsuccessfully upto the stage of Special Leave Petition. Having become allottee of the surplus land with the delivery of possession, the process of utilization stood completed. Thereafter, forcible dispossession being subject matter of civil suit under Section 6 of the Specific Relief Act was a bilateral litigation between the two private individuals where the role of the State of Haryana was not involved. Even the judgment debtors while filing the civil suit for challenging the judgment and decree dated 09.01.1984 did not implead State of Haryana as necessary party. Once the surplus area was declared, it would vest in the State free from all encumbrances under Section 12(3) of the Haryana Ceiling Act with effect from the appointed day. There cannot be any subsisting right

of the big land owner or any person claiming under him after automatic vesting of the surplus land in the State under Section 12(3) of the Haryana Ceiling Act. State of Haryana having become owner of the surplus land lawfully allottee the land to the eligible tenant. The landlord/big land owner ceases to have any interest in the property thereafter.

[9]. The Courts below have taken notice of the fact that in **Civil Suit No.504 of 1984** titled **Sube Singh etc. Vs. Rameshwar etc.**, predecessors-in-interest of the decree holders were restrained from dispossessing the judgment debtors in execution of judgment and decree dated 09.01.1984. The order was extended thereafter. The said civil suit was dismissed on 29.01.1987. Civil appeal was preferred by the judgment debtors in which dispossession of the judgment debtors was stayed vide order dated 09.02.1987. The said appeal was dismissed by the Lower Appellate Court on 25.01.1989. Against the said order, judgment debtors filed R.S.A No.952 of 1989. High Court vide order dated 12.04.1989 stayed the dispossession of the judgment debtors till further orders. Regular second appeal was dismissed vide order dated 31.08.2013 by the High Court. Special Leave Petition was preferred before the Hon'ble Apex Court, in which parties were directed to maintain status quo. Finally special leave petition was dismissed on 17.02.2014 with a direction to the High Court to decide L.P.A No.1731 of 2013 along with RSA Nos.952 and 953 of 1989 within a

specific period. Regular second appeals were finally decided by the High Court and the same were dismissed.

[10]. The provision in terms of Section 14/15 of the Limitation Act provides for the period during which party could not seek his remedy due to stay order. The period consumed in these proceedings has to be excluded while computing period of limitation. If the aforesaid exercise is made in the given context, the filing of execution cannot be presumed to be barred by limitation. After declaration of surplus area, the land owner ceases to have any interest in the land so declared surplus as in view of automatic vesting under Section 12(3) of the Haryana Ceiling Act, the land would vest in the State of Haryana free from all encumbrances with effect from the appointed day. Since the allotment of surplus area was made in favour of the decree holders, therefore, the land was fully utilized with the delivery of the possession. Even under the scheme of Haryana Ceiling Act, the utilization of land cannot be treated at par with the parameters prescribed under the provisions of Punjab Security of Land Tenures Act and Punjab Land Reforms Act. The Provisions are entirely different in Haryana Ceiling Act, wherein concept of automatic vesting was given by the Statue, whereas under the Punjab Act, vesting would take place only after the completion of process of utilization, which is dependent upon allotment, execution of *qabuliatnama* and delivery of possession. No such concept has been provided under the Haryana Ceiling Act,

therefore State of Haryana in any case is not necessary party because after completion of process of vesting and utilization, dispossession of the decree holders took place at the hands of judgment debtors which ultimately resulted in passing of judgment and decree dated 09.01.1984 under Section 6 of the Specific Relief Act. The challenge made to the said judgment and decree passed by the judgment debtors remained unsuccessful throughout upto the Hon'ble Apex Court.

[11]. In view of attending facts and circumstances, the objections filed by the objectors/appellants are totally imaginary. The objectors cannot file objections under the garb of Order 21 Rule 97 CPC. The reliance was placed by learned counsel for the appellants on the ratio laid down in **Bimal Kumar and another Vs. Shakuntala Debi and others, 2012(2) Civil Court Cases 770, Manohar S/o Shankar Nale and others Vs. Jaipalsing S/o Shivalasing Rajput and others, 2008(1) Civil Court Cases 159, Swarn Singh and others Vs. State of Punjab and others, 2014(4) PLR 327, Jaqir Singh Vs. Sanjeev Kumar, 2003(3) Civil Court Cases 267, Smt. Radhi Dei and others Vs. Lalit Bihari Mohanty, AIR 1991 Orissa 36 and M/s Laxmi and Co. Vs. Dr. Anant R. Deshpande and another, AIR 1973 SC 171.** In view of above facts, the proposition of law as culled out from the aforesaid precedents cannot be applied to the facts of the instant case inasmuch as that in a suit challenging the judgment and decree passed under Section

6 of the Specific Relief Act, if dispossession of the judgment debtors is stayed then the entire relief granted under Section 6 of the Specific Relief Act would stand to halt and the decree cannot be executed. The dispossession of the judgment debtors in relation to execution of a decree under Section 6 of the Specific Relief Act has to be appreciated in the context of consequential relief if decree is applied for execution. No Court would have passed any effective order unless and until the order of dispossession was withdrawn or set aside by the Court, therefore, the ratio of **Bimal Kumar and another's case (supra)** and **Manohar's case (supra)** cannot be applied to the facts of the instant case. Mere filing of appeal or revision shall not operate as stay of the proceedings. The instant case was not a case of mere filing of appeal by the judgment debtors, but interim order was granted by the Courts at every juncture. Therefore, ratio of **Swarn Singh and others's case (supra)** and **Jagir Singh's case (supra)** cannot be applied for the reasons recorded hereinabove in the preceding paras. It is correct that the Court can take notice of subsequent events in the light of observations made in **Smt. Radhi Dei and others's case (supra)** and **M/s Laxmi and Co.'s case (supra)**. In the instant case, even if, the subsequent events are taken care of i.e. cancellation of allotment in favour of the decree holders, the same would entail in the situation existed prior to allotment of the land in favour of the predecessor-in-interest of the decree holders. In any case, the judgment debtors would not stand to gain anything as the land had

already been vested in the State of Haryana with effect from the appointed day.

[12]. In the light of observations made hereinabove, I do not consider this case to be fit enough to show any indulgence as all the third party objections are not necessarily to be decided by way of following proper procedure in the form of framing of issues and allowing the parties to lead evidence thereof. It is not necessary to follow up the proper procedure in every case where the Court is satisfied that the objections are frivolous and intended to utilize the time to the disadvantage of the decree holder. The decree holders got decree under Section 6 of the Specific Relief Act on 09.01.1984. After passing of about 33 years, the decree holders have not obtained the possession of the land from which they were illegally dispossessed by the judgment debtors.

[13]. In view of aforesaid, no indulgence can be granted in favour of the appellants. The present execution second appeal is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

24.10.2017
Prince

Whether reasoned/speaking Yes/No

Whether Reportable Yes/No