

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

ESA No. 57 of 2017

Date of Decision: 06.10.2017

KARAMJIT KAUR

-APPELLANT

VS

GURBAX SINGH AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anil Chawla, Advocate,
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

[1]. This execution second appeal has been preferred by Karamjit Kaur wife of Amrik Singh-judgment debtor against the order dated 23.05.2017 passed by Additional Civil Judge (Senior Division), Tarn Taran and judgment dated 06.09.2017 passed by Additional District Judge, Tarn Taran dismissing the appeal against the order dated 23.05.2017.

[2]. Appellant filed objections before the Executing Court for dismissal of the execution petition filed by the decree holder on the ground that she was married to Amrik Singh-judgment debtor in the year 2002. Out of this wedlock, a female child was born in October, 2004. After the birth of female child, the matrimonial relationship between the objector and her husband Amrik Singh-judgment debtor became strained and Amrik

Singh-judgment debtor got second marriage contracted with one Mandeep Kaur without obtaining any divorce from the objector. The judgment debtor did not pay any maintenance to the objector and started living with the aforesaid Mandeep Kaur in Amritsar.

[3]. Learned counsel for the appellant submitted that on 10.11.2007, agreement/compromise was executed whereby the shop in question which was earlier under tenancy was given to her with the consent of the landlord and thereafter, she came in possession of the shop in question. The aforesaid arrangement was done as the objector- estranged wife of the judgment debtor was not being paid maintenance and the status of tenant as held by judgment debtor was allegedly given to the objector after creating charge of maintenance in the form of giving tenancy to the objector requiring her to pay the monthly rent to the landlord.

[4]. Evidently, the husband of the objector-appellant was tenant in the demised premises. He was ejected by the competent Court and the order of ejectment was upheld upto the stage of High Court. The handing over of the rented shop to the objector in lieu of maintenance amount of the objector could not be demonstrated with reference to any evidence of payment of rent to the decree holder at any point of time. The amount of Rs.2 lac as Pagri was alleged to be paid by Amrik Singh alone,

who was having strained relationship with the objector. The alleged agreements dated 10.11.2007 and 17.11.2007 were claimed to be forged and fabricated by the decree holder.

[5]. Since, the demised premises was the subject matter of ejectment by the competent Court, therefore, the same could not be held to be the charged property in lieu of maintenance to the objector (if any) in the absence of any bilateral obligation between the objector and the decree holder. The alleged agreements were never acted upon.

[6]. No evidence has been led to prove the payment of rent by the objector at any point of time. In the event of denial of alleged agreements dated 10.11.2007 and 17.11.2007, the objector was under legal obligation to prove the execution of aforesaid agreements to the hilt.

[7]. The filing of objections have been held to be a collusive exercise between the judgment debtor and the objector. The judgment debtor has lost the litigation upto the High Court. Now, the objector has filed the petition.

[8]. Having lost in both the Courts below, she has ventured to file the present execution second appeal, which in considered opinion of this Court, is nothing but a continued effort to facilitate the judgment debtor to remain in possession of the shop.

[9]. The objections filed by the appellant have been

decided after following regular procedure. No rent note has come forth on record showing any relationship of tenant and landlord between the decree holder and the objector.

[10]. Evidently, the objector has allegedly derived her title of tenant on the basis of alleged agreements, the execution of which has been denied by the decree holder and those agreements are pleaded to be forged and fabricated. No cogent evidence has been led by the objector in the context of proving the execution of aforesaid agreements to the satisfaction of the Court.

[11]. In view of findings recorded by both the Courts below, no exception can be carved out in favour of the objector to hold her to be a tenant in the demised premises in lieu of maintenance payable to her by her husband who has already been ejected from the demised premises by the competent Court and the order of ejectment has been upheld right upto the High Court.

[12]. In view of above, I find no reason to differ with the findings recorded by both the Courts below.

[13]. This execution second appeal, is accordingly, dismissed.

06.10.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE