

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Civil Revision no.297 of 2018 (O&M)

Date of decision : 02.07.2018

Kulwant Kaur and others

... Petitioners

Versus

Gurcharan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Diwan S.Adlakha, Advocate
for the petitioners.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioners challenge the order of the learned Civil Judge (Junior Division), Kurukshetra, dated August 29, 2017, by which the application filed by respondent no.1 invoking Order 21 Rule 101 CPC, has been allowed and the suit filed by the petitioners seeking a declaration as also joint possession of the suit land, as also permanent injunction against the defendants, has been dismissed; holding that earlier respondent no.1 herein had filed a suit for specific performance against respondent no.2 (father of the petitioners), which was decreed in the formers' favour, with the said decree upheld right upto the Supreme Court, after which execution proceedings having been instituted, petitioner no.2 herein, i.e. Rupinder Kaur (also plaintiff no.2 in the suit in question presently), raised objections on the ground that the suit property was transferred to her by her father, i.e. respondent-defendant no.2 and consequently the decree in favour of respondent no.1 is not executable qua her.

However, the said objections filed were dismissed, against which she preferred Civil Revision no.5629 of 2013 before this Court, which was also dismissed vide an order passed on 29.01.2014. Warrants of possession were issued in favour of respondent-defendant no.1, with a sale deed thereafter also executed in his favour.

Hence it has (effectively) been held vide the impugned order that a decree having been passed (qua the suit property) earlier, pursuant to which execution proceedings were thereafter instituted, a separate suit would not lie, with only objections maintainable qua that property, in execution proceedings instituted by the decree holder.

Learned counsel for the petitioners has submitted that the suit property is ancestral in nature and therefore the present petitioners had instituted the suit in question seeking a declaration that the property be declared to be such and hence, the previous suit filed by respondent no.1, impleading the petitioners' (plaintiffs') father, Jarnail Singh (present respondent no.2) as a defendant, was a decree that was not binding on the rights of the petitioners.

Having considered the matter, Order 21 Rule 101 of the CPC needs to be referred to, which reads as below:-

“101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time

being in force, be deemed to have jurisdiction to decide such questions.”

Very obviously a suit on the same cause of action would be barred, with the only remedy with the objector to be in terms of Rules 97 and 99 of Order 21, such remedy already having been availed of by petitioner-plaintiff no.2.

As regards the argument of learned counsel, it needs to be noticed that in the impugned order a finding has also been recorded by the learned Civil Judge, that in the suit decided in favour of respondent no.1 herein (decree holder), a specific finding had been given that a document exhibited by the defendant, i.e. respondent no.2 (father of the present petitioners), as Ex.D1, showed that the suit land was self-acquired property and not ancestral. The inference therefore being that, even on merits, the plea of the present petitioners in the suit now filed by them that it was ancestral property which their father could not have transferred, was a plea that was not available to them, that suit having been decreed in favour of respondent no.1 right up to the Supreme Court.

This is other than the fact that a plea was also raised by present petitioner no.2, in the objections filed by her in the Executing Court, that the suit property had been transferred to her by her father, with those objections also having been dismissed and that order having been upheld by this court and having become final.

Consequently, in any case, remedy qua the suit land not being a fresh suit, in view of the bar imposed by Rule 101 of Order 21, I see no error in the impugned order passed by the learned Civil Judge (Junior Division), Kurukshetra, allowing the application of respondent no.1 and

thereby dismissing the suit filed by the present petitioners. Hence finding no merit in the petition, it is dismissed in *limine*.

(AMOL RATTAN SINGH)
JUDGE

July 02, 2018.
D.K/dinesh

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