

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4135 of 2016
Date of Decision-08.01.2018

Gurbax Singh ... Petitioner
Versus
Jaswant Singh and others ... Respondents

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

Present: Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Alok Kumar Jain, Advocate and
Mr. Varun Issar, Advocate
for the respondents/DH.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 27.05.2016 passed by Additional District Judge, Jalandhar vide which application under Order 41 Rule 5 read with Section 151 CPC for stay of execution proceedings before the executing Court was dismissed.

[2]. Respondents/decreed holders filed Civil Suit No.19 dated 09.04.1981 against Smt. Jaswinder Kaur and others for declaration, possession and permanent injunction. The suit was partly decreed vide judgment and decree dated 18.07.1991 by Sub Judge, Ist Class, Jalandhar. Sale deeds Ex.DW2/1 dated 13.06.1980, Ex.DW2/3 dated 13.06.1980, Ex.DW2/7 dated 27.06.1980 and Ex.DW4/2 dated 13.05.1980 were held to be void

and illegal. Plaintiffs were held to be owner of the land covered by the aforesaid sale deeds i.e. land measuring 412 kanals 15 marlas and they were held entitled to get possession of the aforesaid land from purchasers/defendants No.6 to 11 therein. Permanent injunction was also granted and the defendants were restrained from alienating the suit property further to anyone.

[3]. Appeal filed against the aforesaid judgment and decree was dismissed by the Lower Appellate Court on 13.01.1997. Regular second appeal i.e. RSA No.859 of 1997 was dismissed by the High Court on 27.03.1997 and the said judgment was maintained in S.L.P before the Hon'ble Supreme Court.

[4]. One Avtar Singh son of Kehar Singh filed Civil Suit No.125 of 1998 against Amrik Singh and others including the decree holders for declaration to the effect that judgment and decree dated 18.07.1991 passed by Sub Judge, Ist Class, Jalandhar, judgment and decree dated 13.01.1997 passed by the Lower Appellate Court and judgment dated 27.03.1997 passed by the High Court in RSA No.859 of 1997 were illegal, null and void. In the said suit, only defendants No.1 to 15 were served and the remaining defendants including decree holders were proceeded against *ex parte*. The suit was decreed vide judgment and decree dated 21.03.2003 by Civil Judge (Junior Division), Jalandhar and declaration was granted to the effect that decree

dated 18.07.1991 passed by Sub Judge, 1st Class, Jalandhar, judgment and decree dated 13.01.1997 passed by the Lower Appellate Court and order dated 27.03.1997 passed by the High Court in RSA No.859 of 1997 were illegal, null and void and were not binding upon the rights of the plaintiff and vendees under the four sale deeds as executed by Faqir Singh attorney of the vendors were held to be valid. In the aforesaid suit, an application under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 21.03.2003 was filed by Sukhwant Siri Kukreja widow of Sampuran Singh judgment debtor No.25 in the said suit. The said application was allowed vide order dated 31.05.2014 and the judgment and decree dated 21.03.2003 passed by Civil Judge (Junior Division), Jalandhar was set aside.

[5]. Thereafter, execution was filed by the decree holders in respect of judgment and decree dated 18.07.1991 before executing Court, in which objections were filed by the objector/petitioner Gurbax Singh on the basis of judgment and decree dated 21.03.2003 and the land subject matter of execution which was sold by Daljit Singh in favour of Ajit Singh vide sale deed dated 13.04.2008. Land measuring 67 kanals 4 marlas was sold by Sewa Singh and Amrik Singh in favour of the petitioner and his brother Narinder Pal Singh vide sale deed dated 11.04.2008. Petitioner stated that since the judgment and decree dated 18.07.1991 and subsequent judgment and decree were set aside in the suit filed by Avtar Singh on 21.03.2003,

therefore, his vendors were having all the rights to sell the land in dispute to him and his brother Narender Pal Singh.

[6]. Executing Court after noticing the fact that the judgment and decree dated 21.03.2003 which was passed *ex parte* against the decree holder was set aside under Order 9 Rule 13 CPC on 31.05.2014, dismissed the objections by holding that after restoration of the suit qua the decree holders, the same was ultimately dismissed under Order 17 Rule 3 CPC, therefore the suit land which was subject matter of judgment and decree dated 18.07.1991 is being executed and the said judgment has attained finality upto the Hon'ble Supreme Court. Petitioner and others were vendees *lis pendens* and had knowledge of the litigation, therefore, they will step into the shoes of their vendors and objections are hit by Order 21 Rule 102 CPC.

[7]. Petitioner has stepped into the shoes of his vendor and is bound by the decree under execution. The objections filed by the petitioner were dismissed and the application under Order 41 Rule 5 CPC filed before the Lower Appellate Court has rightly been rejected as principles of *lis pendens* were applicable and no *prima facie* case was made out in favour of the petitioner for grant of interim order of stay of execution before the executing Court. The *lis* has already attained finality upto the Supreme Court. Judgment and decree once passed in Civil Suit No.125 of 1998 by the trial Court on 21.03.2003 has already been set aside under

Order 9 Rule 13 CPC vide order dated 31.05.2014. All the ingredients of existence of *prima facie* case, balance of convenience and sufferance of irreparable loss in the event of not granting *ad interim* injunction are not in favour of the petitioner.

[8]. It would be relevant to note that on 29.09.2016, learned counsel for the petitioner made a categorical statement that no case was filed before the Hon'ble Apex Court and the petitioner filed an affidavit dated 01.08.2016 in this regard. On 29.09.2016, following order was passed:-

“Contends that in the order dated 27th May, 2016 passed by the Additional District Judge, Jalandhar, there is an observation that the judgment dated 18th July, 1991 had attained finality upto the level of Hon'ble Supreme Court. According to the petitioner, in fact, no matter went upto the Supreme Court. He has filed an affidavit dated 01.08.2016 in this regard.

Comments of the concerned office be sought.

Adjourned to 26.10.2016.

In the meanwhile, execution proceedings if still pending may be adjourned beyond the next date fixed before this Court.”

[9]. On receiving report from the Court of Additional District Judge, Jalandhar, it was found that S.L.P i.e. Civil Appeal No.11705 of 1997 was filed before the Hon'ble Supreme Court and the same was dismissed on 14.07.1997. Petitioner was put to term as to why action be not initiated for filing false affidavit before this Court and it was also proposed to impose exemplary

cost vide order dated 14.12.2016. Thereafter, interim order dated 29.09.2016 was vacated by the High Court on 16.01.2017. Further adjournment was granted subject to provisional cost of Rs.30,000/- on 23.01.2017. Thereafter, case was adjourned on number of occasions. Rigour of order dated 29.09.2016 was noticed by this Court and due to proceedings on record, further adjournment was granted subject to further cost of Rs.20,000/- on 05.07.2017. Even thereafter, this Court granted indulgence due to the circumstances appearing on record.

[10]. In view of circumstances as noticed above, this Court is not inclined to interfere on merits. Since the petitioner has tried to mislead the Court by filing false affidavit dated 01.08.2016 and this Court has also noticed that appropriate action needs to be taken in the matter, therefore, I dismiss this revision petition with cost of Rs.50,000/- to be recovered from the petitioner for filing false affidavit before this Court. Petitioner is directed to deposit the aforesaid cost in Punjab State Legal Service Authority Funds, failing which the executing Court is directed to recover the cost as land revenue.

(RAJ MOHAN SINGH)
JUDGE

08.01.2018
Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No