

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

Sr. No.106

C.R. No.4041 of 2018

Date of decision: 30.08.2018

Surinder Kaur

....Petitioner

versus

Parmjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Aditya Dassaur, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 04.12.2017 passed by the Civil Judge (Senior Division) SBS Nagar (for short – 'the Executing Court') dismissing the objections filed by the petitioner. Challenge is also made to the order dated 21.04.2018 passed by the Trial Court issuing warrants of sale of the attached residential house of which the petitioner claims to be the owner.

After hearing learned counsel for the petitioner and going through the record, the facts in brief which have been culled out are that respondent No.1 filed a suit against respondent No.3 therein seeking recovery of ₹ 2,00,000/- alongwith interest. Such suit was decreed through

an ex parte decree dated 26.09.2008. Respondent No.3 then filed an application under Order 9 Rule 13 CPC seeking setting aside of the aforesaid ex parte judgment and decree. The application was dismissed by the Trial Court on 11.05.2016. Thereafter, respondent No.3 filed an appeal against such dismissal of his application which is still pending.

In the meanwhile, respondent No.1 filed an application seeking execution of the aforesaid decree dated 26.09.2008 during the course of which, in the year 2010, the property which is the subject matter of the present proceedings was attached. However, before the execution proceedings could reach its logical end, through order dated 10.11.2012, the execution application filed by respondent No.1 was dismissed in default. Later, at the instance of respondent No.1 the execution proceedings were revived. Thereafter, on 23.01.2014, the property in question was again attached under orders of the Executing Court. However, before the property in question could be put to sale, in October/November, 2017, the petitioner filed third party objections before the Executing Court to the effect that the property in question being in her ownership should and could not be put to sale for satisfying the debts of her son Satpal-respondent No.3, who had already been disinherited by her. The dismissal of her objections is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submits that the property in question was owned by the petitioner's husband-Bhagat Singh, who before his death, in the year 1998, through an agreement dated 15.12.1997, had transferred the same to the petitioner. It was further submitted that in the year 2005, the petitioner had disinherited Satpal and therefore, in view of

the afore two facts, the suit property could not have been sold to satisfy debts of Satpal.

The submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

On 26.09.2008, the Trial Court passed a judgment and decree requiring respondent No.3 to pay to respondent No.1 an amount of ₹ 2,00,000/- alongwith interest. It is admitted that in pursuance to the execution proceedings initiated by respondent No.1, the property in question was attached in the year 2010. However, thereafter the execution application was dismissed in default. On revival of the same, the property in question was again attached on 23.01.2014. In October/November 2017, the petitioner filed her objections against the attachment and proposed sale of the property in question in which she categorically stated that since the year 1997 it was she who was owner of the property in question and that only on 28.10.2017 did she come to know that the same was being put to sale. Since the petitioner claims to be owner of the property in question since the year 1997, it is not believable that she was not aware with regard to its attachment initially in the year 2010 and then again on 23.01.2014, especially when in the interregnum her daughter Manjit Kaur had filed objections in the execution proceedings twice over and it is also not the case set up by either Manjit Kaur or the petitioner that they were not on talking terms. Rather, in the initial objections filed by Manjit Kaur she had pleaded that the property in question be not auctioned as it was owned by the petitioner which goes to show their close relations.

The fact pleaded by the petitioner that she was living abroad

and thus, did not come to know of the execution proceedings also cuts no ice with me as it has been withheld from the Executing Court as also this Court as to when did the petitioner go abroad as also the period of her stay over there.

In view of the above, this Court finds that the petitioner had not approached the Executing Court with clean hands and thus, disentitled herself to be even heard on merits.

Even otherwise, respondent No.3 Satpal initially filed objections before the Executing Court which were dismissed on 17.07.2010. Thereafter, in the year 2011, his sister Manjit Kaur filed objections before the Executing Court on the ground that the property in question was earlier owned by Bhagat Singh and after his death, since he died intestate, it was she, alongwith her sisters Sarabjit Kaur and Kulwinder Kaur as also her mother (the petitioner) who became owners of the property in question. These objections were dismissed on 28.08.2012. However, Manjit Kaur again filed objections and this time she pleaded that Bhagat Singh had executed a Will bequeathing therein the property in question to the petitioner. In view of the contradictory pleas taken by Manjit Kaur, the Executing Court again dismissed her objections.

Now came the afore-referred objections by the petitioner which were on different lines as it was submitted therein that the property in question had come under her ownership on the basis of an agreement dated 15.12.1997 through which it had been transferred to her by her husband.

In view of the above facts and in particular the contradictions in the pleas taken by Manjit Kaur and the petitioner as also for the reason that

the agreement relied upon by the petitioner, which was an unregistered document and had not been even produced by her, the Executing Court being of the opinion that the objections had been filed by the petitioner only to create hurdles in the way of the execution of the decree, dismissed the petitioner's objections.

No error is found in the order impugned in the present proceedings and resultantly, the present petition is ordered to be dismissed.

(DEEPAK SIBAL)
JUDGE

August 30, 2018
Jyoti 1

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