

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 119

CR-4635-2018 (O&M)

Date of decision : 31.07.2018

Shanti Devi

..... Petitioner

VERSUS

Suman and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A. P. Kaushal, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

Through the instant petition, challenge is made to the order dated 26.05.2016, passed by the Civil Judge (Junior Division), Ludhiana (for short, the Executing Court), through which third party objections filed by the petitioner have been dismissed. Also under challenge is the order dated 02.05.2018, passed by the Additional District Judge, Ludhiana (for short, the Appellate Court), dismissing the appeal filed by the petitioner against the aforesaid order of the Executing Court.

The facts in brief which need to be noticed for adjudicating upon the present petition are that in the year 2007 respondent No. 1 filed a suit against respondent No. 2, seeking therein eviction of respondent No. 2 from the house measuring 50 square yards bearing No. 514, Gali No. 10, Block-A, Basant Nagar, Shimlapuri, Ludhiana (for short, the suit property) on the ground that respondent No. 1 was the owner of the suit property and respondent No. 2 was a licensee therein who refused to vacate the premises even after repeated requests made by respondent No. 1. Respondent No. 2 contested the suit. However, no merit in such contest by him was found by

the Trial Court, resulting in the passing of the decree dated 29.10.2014 in favour of respondent No. 1. Respondent No. 2 challenged the aforesaid decree by way of an appeal which was dismissed by the Appellate Court on 23.03.2016. While the aforesaid appeal was pending, respondent No. 1 filed an application before the Executing Court, seeking to execute the aforesaid decree dated 29.10.2014. In such proceedings, the petitioner surfaced for the first time and filed objections which through the impugned order dated 26.05.2016 were dismissed by the Executing Court. An appeal preferred by the petitioner against such dismissal met the same fate as her objections, giving her a cause to knock the doors of this Court through the present petition.

Learned counsel for the petitioner submits that both the orders under challenge are illegal as on the petitioner's third party objections no issues were framed. According to him, since issues were not framed, principles of natural justice were violated and thus on this ground alone both the impugned orders are liable to be set aside.

On consideration of the submissions made by learned counsel for the petitioner, no merit is found in the same.

It is true that no issues were framed on the objections raised by the petitioner. However, in the facts of the present case, the orders passed by Executing Court as also the Appellate Court call for no interference as they are found to have been passed only with a view to secure the ends of justice.

Way back in the year 2007 respondent No. 1 had filed a suit seeking therein the eviction of respondent No. 2 from the suit property.

Such suit was decreed in the year 2014. Appeal against the aforesaid decree was dismissed in the year 2016. While the matter remained pending though respondent No. 2 was opposing respondents No. 1's case tooth and nail but nowhere did he plead that it was not he but the petitioner who was in possession of the suit property as his tenant. Only during the execution proceedings did the petitioner surface for the first time, claiming herself to be a tenant under respondent No. 2. She based her claim on a rent deed dated 22.01.2014 which is incidentally unregistered and purportedly entered into between respondent No. 2 and the petitioner only a few months before the decree was passed by the Trial Court ordering the eviction of respondent No. 2 from the suit property. In view of these facts which speak for themselves, no fault is found in the impugned orders passed by both the Executing Court and the Appellate Court that both the petitioner and respondent No. 2 colluded to deprive respondent No. 1 the fruits of the decree passed in her favour. Fraud vitiates everything and therefore both the Executing Court as also the Appellate Court rightly held that in the facts of the present case non-framing of issues did not prejudice any of the petitioner's rights. On being specifically asked by this Court also learned counsel for the petitioner could not show any prejudice caused to the petitioner on this count.

The attempt by the petitioner is only to reopen the entire proceedings to keep respondent No. 1 hanging in spite of the fact that she had approached the Trial Court about eleven years ago seeking eviction of respondent No. 2 from the suit property and has judgments and decrees of both the Trial Court as also the Appellate Court in her favour. In the facts

of the present case, the same cannot be permitted.

In view of the above, no merit is found in the present petition.

Accordingly, the same is ordered to be dismissed.

No costs.

31.07.2018

shamsher

[DEEPAK SIBAL]
JUDGE

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