

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

CR No.5135 of 2018
Date of Decision : 29.11.2018

Pishori Lal

...Petitioner

Versus

Sahib Singh and another

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rakesh Bakshi, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 09.05.2018 (Annexure P-9), passed by the learned Civil Judge (Senior Division), Ambala, vide which, application dated 13.08.2014 (Annexure P-7), filed by respondent No.2/Objector for restitution of suit property etc. was allowed.

2. The only submission made by learned counsel is that once objections filed by respondent No.2/Objector were dismissed, subsequent application by respondent No.2 was not maintainable and only appeal could have been filed against order dated 07.09.2013, dismissing the objections.

3. No other point has been argued.

4. A perusal of order dated 07.09.2013, reveals that the objections filed by respondent No.2 were dismissed on the ground that none had appeared on behalf of respondent No.2/Objector despite repeated

calls besides the execution petition had already been withdrawn by the decree-holder on 25.04.2013. Thus the objections were not dismissed on merit but in the circumstances as noted above. Subsequently, an application was filed by respondent No.2 under Section 151 read with Section 144 CPC for recalling order dated 05.04.2013, whereby possession of the property in question was handed over to the decree-holder i.e. petitioner, for restoration of possession as also for awarding her damages/compensation of ₹5 Lakh besides for initiation of criminal prosecution of the petitioner-decree-holder as well as judgment debtor-defendant for playing fraud upon the Court.

5. Initially the petitioner-plaintiff had filed a suit seeking relief of permanent injunction against respondent No.1 Sahib Singh qua the suit property on the allegations that he had purchased the same for consideration from respondent No.1. Respondent No.1 suffered a statement in the aforesaid civil suit that he had delivered possession of the suit property to the petitioner-plaintiff and in view thereof, petitioner-plaintiff suffered a statement that he did not want to pursue the suit. Thereafter, vide order dated 07.01.2011, passed by the then learned Addl. Civil Judge (Senior Division), Ambala City, the civil suit filed by the petitioner-plaintiff on 20.12.2010 was dismissed as withdrawn.

6. The date on which the civil suit had been filed by the petitioner-plaintiff i.e. less than a fortnight prior to the statement made by respondent No.1 as also the statement thereafter made by the petitioner-plaintiff that he did not want to pursue the suit goes to show that the arrangement between the two leading to dismissal of the suit as withdrawn

while binding respondent No.1 to the statement made by him was a collusive affair.

7. Learned counsel has not disputed that the suit property qua which the petitioner-plaintiff had filed a suit against respondent No.1 i.e. defendant in the suit is owned by the Haryana Wakf Board and that respondent No.2 is a tenant in the suit property. It is the stand of the learned counsel that fraud was played on the petitioner-plaintiff by respondent No.1. Learned counsel contends that after the civil suit was dismissed as withdrawn, warrant of possession dated 18.04.2013 were obtained by the petitioner-plaintiff qua the suit property and in pursuance thereof, respondent No.2 was dispossessed from the suit property. It was in the aforementioned background that an application was moved by respondent No.2 in view of the judgment of the learned Wakf Tribunal, Ambala dated 21.10.2016 for restoration of the suit property contending that she had been wrongly dispossessed from the same.

8. Although the civil suit filed by the petitioner-plaintiff was dismissed as withdrawn on 07.01.2011 in view of the statement made by respondent No.1 that he would not dispossess the petitioner from the suit property while making it clear that respondent No.1 would remain bound by the statement made by him in Court, the fact remains that learned counsel has conceded that as per order dated 21.10.2016, passed by the learned Addl. District Judge-cum-Chairman-Haryana Wakf Board, Ambala, the suit property belongs to the Haryana Wakf Board, Ambala City and the Haryana Wakf Board was in symbolic possession of the same. Besides respondent No.2 was a tenant therein. Thus, respondent No.1 had

no right qua the property in question. Accordingly, in view of the Haryana Wakf Board being the owner of the suit property and respondent No.2 being tenant in the same, it is apparent that respondent No.1 had no right in respect of the suit property, therefore, could not have made a statement that he would not dispossess the petitioner-plaintiff from the suit property. In the circumstances, the order passed by the learned Addl. Civil Judge (Senior Division), Ambala dated 09.05.2018, ordering restitution of possession of the suit property to respondent No.2 while directing the petitioner to pay her ₹20,000/- as damages, does not warrant intervention.

9. Accordingly finding no merit in the revision petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

29.11.2018

rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No