

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.5767 of 2017(O&M)  
Date of Decision: 06.12.2018

Ranjit Singh .....Petitioner  
Versus  
Harjinder Singh and others .....Respondents

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

Present: Mr. Ashok Giri, Advocate  
for the petitioner.

Ms. Rishma Verma, Advocate  
for respondent No.3.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has preferred this revision petition against the order dated 29.07.2017 passed by Civil Judge (Senior Division), Jalandhar vide which application under Order 21 Rule 89 CPC was dismissed.

[2]. Respondent No.1 filed a suit for recovery which was decreed by the trial Court vide judgment and decree dated 07.09.2009. The suit for damages on account of loss of reputation and good-will was dismissed, however, the suit claiming damages on account of mental harassment and torture on account of filing false and frivolous complaint by the defendant and with regard to legal fee and another expenses

i.e. Rs.1,25,000/- and Rs.25,000/- respectively was decreed with interest @ 6% per annum from the date of filing of the suit till actual realization of the amount. The aforesaid judgment and decree has attained finality.

[3]. In execution of the decree, the property of the judgment debtor was sold. Respondent No.3 being the highest bidder in the auction proceedings, purchased the land. The sale has been confirmed on 19.08.2017 and even sale certificate was issued on 15.09.2017. Respondent No.3 had deposited the amount with the permission of the Court.

[4]. Perusal of the record would show that the petitioner Ranjit Singh who is brother of the judgment debtor/respondent No.2 filed an application under Order 21 Rule 58 CPC i.e. objections to the attachment of the property on 05.10.2016. It was claimed by the petitioner that the decree holder had given the details of the property belonging to the petitioner. Petitioner was not party to the decree, therefore, attachment of the property could not be done to the extent of share of the petitioner.

[5]. The said application was rejected by the Civil Judge (Senior Division), Jalandhar vide order dated 13.02.2017. In the aforesaid objections, the petitioner claimed the suit property to be owned by him. In the execution, warrants of attachment were

received back unserved. It was observed that the warrants could not be executed without police help. A request was made for allowing the police help and the same was even allowed. Thereafter, warrants of attachment were received back with a report that demise premises was found locked. The property was ordered to be attached by breaking open the locks. Thereafter, objections were filed by the petitioner under Order 21 Rule 58 CPC. Along with objections only a copy of *jamabandi* was attached wherein name of the petitioner and other legal heirs were found mentioned. Original *jamabandi* or certified copy of the same were not placed before the Court. The property was within lal lakir. The ownership and possession over the property under attachment could not be proved by the petitioner. Petitioner could not prove the property involved under warrants of attachment viz-a-viz his property. The objection petition was dismissed and warrants of attachment were issued with the police help by breaking open the locks of the property. The order dated 13.02.2017 passed by the trial Court was never assailed by the petitioner in any Forum and that had attained finality.

[6]. Notice of motion was issued on 29.08.2017. Respondent No.1 was served through affixation and it was found that respondent No.2 had left the given address.

Respondent No.1 was proceeded against *ex parte* on 02.12.2017. On 16.07.2018, it was found that respondent No.2 has not contested the litigation before the trial Court as he had shifted to Canada, therefore, presence of respondent No.2 in the present revision petition was not considered to be material. Respondent No.3 contested the revision petition.

[7]. Perusal of order 21 Rule 58(4) CPC would show that in the event of adjudication of objections under Order 21 Rule 58 CPC, the order shall have the force of decree and was appealable in nature. No such remedy was availed by the petitioner. Ultimately, the land was put to auction on 15.05.2017. In the auction proceedings, it was recorded that one Ranjit Singh who claimed himself to be brother of the judgment debtor objected to the auction process along with his wife and one young man i.e. son of Ranjit Singh by showing some papers. The Court auctioner found that the papers were not relating to the property in question. However, he advised them to avail their remedy before the Court.

[8]. Evidently, the petitioner did not participate in the auction proceedings, rather tried to object the auction proceedings. The auction proceedings were conducted on 15.05.2017 which were duly signed by the parties. As per bid register, respondent No.3 was the highest bidder having made the highest bid of

Rs.3,52,000/-. The said amount was deposited by respondent No.3 under the orders of the Court. An amount of Rs.88,000/- was deposited by way of demand draft dated 15.05.2017 and the remaining amount was deposited by him within the specified period.

[9]. Thereafter, the petitioner filed an application under Order 21 Rule 89 CPC, seeking permission to deposit the amount on 23.05.2017 on which following endorsement was made by the Court:-

*“Only amount be deposited as per rules at his responsibility.”*

[10]. Perusal of the aforesaid endorsement would show that the petitioner was allowed to deposit the amount at his own responsibility subject to lawful consideration at a subsequent stage. Petitioner is shown to have deposited an amount of Rs.3,09,100/- on 24.05.2017. Para No.3 of the application filed by the petitioner under Order 21 Rule 89 CPC reads as under:-

*“3) That the applicant wants to deposit the amount of decree which is 1,50,000/- along with the interest @ 6% per annum from the date of filing of suit April, 2002 till May, 2017 which comes around for 15 years and the interest which comes around 1,35,000/- hence total 2,85,000/- and cost of suit is 6500 thus total 2,91,500/- and 5% on the deposit of auction amount which is the amount deposited by the bidder is 3,52,000x5%*

*=17,600 thus total amount comes to be around 3,09,100/- along with the fees of the auctioneer by the Court.”*

[11]. Apparently, the petitioner has mentioned the amount deposited by the bidder as Rs.3,52,000/-, but ultimately he calculated the due amount to be Rs.3,09,100/-. Petitioner has claimed that the auction property is required to be restored to him after payment of aforesaid amount. As per Order 21 Rule 88 CPC, a bid of a co-sharer is a valid bid and a co-sharer has preference over others. Evidently, the petitioner has not made any bid despite his presence at the time of auction proceedings.

[12]. For maintaining the application under Order 21 Rule 89 CPC, the petitioner has to show the interest in the property. Precisely, for proving the interest in the property, objections under Order 21 Rule 58 CPC were filed on earlier occasion and the same were dismissed by the trial Court as no material was produced by the petitioner to prove his connectivity with the attached land. The attachment of the property has not been assailed by the petitioner in any manner. Even as per the amount deposited by the petitioner, the land is not in consonance with the bid made by respondent No.3. The property was sold in execution of a decree. Sale could have been set aside on the ground of irregularity or fraud in conducting the auction proceedings in terms of Order 21 Rule

90 CPC.

[13]. Since the petitioner could not prove his interest in the property in the objections under Order 21 Rule 58 CPC, therefore, under Order 21 Rule 90(3) CPC, the application to set aside the sale under the rule cannot be entertained upon any ground which the petitioner could have taken, on or before the date on which the proclamation of the sale was done. The sale has already been confirmed on 19.08.2017 and even sale certificate has been issued on 15.09.2017. The deposit made by the petitioner on 24.05.2017 was not as per the exact amount for which respondent No.3 had purchased the land and the interest of the petitioner in the property so attached could not be proved with the dismissal of the objections on 13.02.2017.

[14]. The application under Order 21 Rule 89 CPC was filed on 28.05.2017/23.05.2017 and the endorsement qua the deposit of amount was as per rule and at own responsibility of the petitioner. The endorsement in any way does not create any indefeasible right in favour of the petitioner. No irregularity or fraud has been pointed out in the conduct of sale. Even the petitioner was found present during auction proceedings, but he did not participate in the auction proceedings. The interest of the petitioner in the property could not be demonstrated with reference to any material on record despite the petitioner having

opportunity to get his objections sustained under Order 21 Rule 58 CPC. Having failed therein, the petitioner tried to project his interest by way of filing of application under Order 21 Rule 89 CPC which could have been filed only by a person claiming interest in the property sold. Petitioner has claimed the property in his own right and he has not acted on behalf of the judgment debtor in any manner, therefore, the petitioner is not entitled to avail any benefit under Order 21 Rule 89 CPC. Since the auction proceedings were not conducted with any irregularity or fraud, therefore, no application to set aside the sale can be entertained in view of Order 21 Rule 90(3) CPC. The confirmation of sale and thereafter, issuance of sale certificate would clothe respondent No.3 with legal title to the property in question.

[15]. For the reasons recorded hereinabove, I find no error in the impugned order dated 29.07.2017 passed by Civil Judge (Senior Division), Jalandhar. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

06.12.2018

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**(RAJ MOHAN SINGH)  
JUDGE**

**Whether reasoned/speaking  
Whether reportable**

**Yes/No  
Yes/No**