

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

**Civil Revision No.689 of 2015
Date of Decision:08.01.2018**

Renu Kundra

.....Petitioner

Vs

Surjit Singh and another

....Respondents

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

Present:Mr. Pankaj Jain, Advocate
for the petitioner.

Mr. Kanwal Goel, Advocate
for respondent No.1.

Mr. Rajiv Vij, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 24.12.2014 passed by the Addl. District Judge, Jalandhar whereby order dated 09.12.2014 passed by the Civil Judge (Jr. Divn.), Jalandhar was upheld and the objections filed by the petitioner under Section 47 CPC were summarily dismissed.

[2]. Brief facts are that a suit for specific performance of agreement to sell dated was filed by the decree-holder/respondent No.1 against the defendant/respondent No.2

in respect of shop No.2 in Chaugitti, Tehsil and District Jalandhar measuring 140 sq. ft. shown in red colour in the site plan comprised in Jhasra No.1935/1825-1826-485/21 min in the area of village Chaugitti which was bounded as under:-

East	:	Property of Surjit Kaur
West	:	Road
North	:	Property of Surjit Kaur
South	:	Property of Surjit Kaur

In the alternative a suit for recovery of Rs.3,20,000/- i.e. total of the earnest money along with interest @ 24% per annum was claimed. Permanent injunction was also sought restraining the defendant/respondent No.2 from alienating the suit property except in favour of the plaintiff/respondent No.1.

[3]. Respondent No.2 was duly served and even she filed written statement and thereafter proceeded against *ex parte*. Counsel appearing on her behalf pleaded no instructions on 27.11.2007. The suit was ultimately decreed by the trial Court vide judgment and decree dated 09.04.2009.

[4]. On the day of passing the decree, the defendant/respondent No.2 sold the property in favour of the petitioner vide registered sale deed dated 09.04.2009 for a consideration of Rs.2,80,000/-. The property forming subject matter of the aforesaid sale deed was shop No.2, measuring 140 sq. ft. measuring 7'-0" x 20'-0" along with rights in roof

situated in Abadi Chougiti, Tehsil and District Jalandhar
bounded as under:-

East : Malkiat Singh

West : Road

North : Malkiat Singh

Sought : Malkiat Singh

The aforesaid property as per *Jamabandi* for the year 2003-04, *Khata* No.420/443, 414/437, comprising *Khasra* No.1935/1825-1826-485/21 (0-0), 1935/1825-1826-485/12/2 (0-10) was claimed to be owned and possessed by the petitioner.

[5]. In the execution filed by the decree-holder/respondent no.1, petitioner filed objections under Section 47 CPC read with Order 21 Rule 101 CPC. The objections were dismissed by the executing Court vide order dated 09.12.2014 on the ground that the objections filed by the objector cannot be entertained in view of the petitioner being vendee *lis pendens* and the objections were hit by Order 21 Rule 102 CPC. The order passed by the executing Court was upheld in appeal vide order dated 24.12.2014.

[6]. Learned counsel for the petitioner submitted that the dimensions of the property purchased by the petitioner vide sale deed dated 08.04.2009/09.04.2009 were different than the

property mentioned in the civil Court decree. East, North and South directions of the suit property were different in both the aforesaid transactions. In the sale deed properties of Malkiat Singh were situated towards East, North and South directions of the property so purchased, whereas in the suit the suit property was having properties of Surjit Kaur towards East, North and South directions.

[7]. By referring to the aforesaid factual position, learned counsel contended that the executing Court should have framed proper issues while deciding the objections filed by the petitioner. All issues arising out of the suit were to be decided in the same process by way of framing proper issues. The objections filed by the petitioner could not be treated as frivolous, so as to dismiss them summarily. The trial Court should have issued notice to the defendant/respondent No.2 instead of proceeding against *ex parte* when learned counsel for the defendant/respondent No.2 pleaded no instructions.

[8]. I have heard the submissions made by learned counsel for the parties.

[9]. At the time of issuance of notice of motion on 29.01.2015, following order was passed:-

“Counsel submits that an ex parte decree for

possession by way of specific performance dated 09.04.2009 was passed against respondent no. 2 (Annexure P-3) pertaining to Shop No. 2 measuring 140 sq. ft. The petitioner was the bona fide purchaser having purchased the shop in question on the same day for a sum of `2,80,000/-, which had a frontage of 7 ft. and depth of 20 ft., being the owner of the adjoining property. The petitioner in the meantime, raised construction on the first floor of the shop and stairs were taken out from the shop going to the roof of the first floor. Reference is made to Annexure P-2, the photograph of the premises. The decree holder filed execution on 19.10.2009 and deposited the balance on 10.07.2013. In the meantime, an application for setting aside the ex parte decree has also been filed in November, 2014 under Order 9 Rule 13 CPC by respondent no. 2 (Annexure P-6). It is accordingly submitted that the Courts, by dismissing the objections in a summary manner only on the ground that the petitioner has purchased the property during the litigation, were not justified.

Notice of motion.

In the meantime, the petitioner shall not be dispossessed from the property in question till the next date of hearing.

At this stage, Mr. Kanwal Goel, Advocate accepts notice on behalf of contesting respondent no. 1 and prays for time. Respondent no. 2 be served by way of dasti process also.

Adjourned to 13.03.2015.”

[10]. Evidently, defendant/respondent No.2 has also filed an application under Order 9 Rule 13 CPC for setting aside the ex

parte judgment and decree dated 09.04.2009. Mere filing of application under Order 9 Rule 13 CPC by respondent No.2 would not advance the case of the petitioner as on the date of filing of the application, respondent No.2 had no subsisting interest in the property so sold by him in favour of the petitioner, therefore, filing of such an application would be an eye wash. However the objections filed by the petitioner ought to have been decided by way of proper procedure as the petitioner has *prima facie* demonstrated that the properties involved in the decree as well as in the sale deed were having different dimensions. The difference if any, could have been answered by the executing Court by way of framing issues and allowing the objector to lead evidence. Dismissal of the objections summarily would not be in consonance with the settled principles of law.

[11]. It is true that all the irrelevant objections are not required to be dealt with by way of framing proper issues in view of **Rocky Tyres vs. Ajit Jain, 1998(2) R.C.R. (Civil) 17** and vendee *lis pendens* has no right to resist or obstruct the execution of decree being covered under Order 21 Rule 102 CPC., but if the person in possession obstructs the execution of decree by showing some semblance of interest in the property on the basis of *prima facie* evidence, then at least objections

should be decided by way of following proper procedure. The objector has *prima facie* demonstrated before the Court that the dimensions of the property purchased by her were different than the property which was subject matter of the decree. Even if, the purchaser has purchased the property on the date of passing of the decree and has constructed a building over it (Annexure P-2), the executing Court was at least required to adjudicate the claim of the petitioner by framing necessary issues and by allowing the petitioner to establish that the property purchased by her was different than the property which was decreed in favour of the decree holder.

[12]. Since the Courts below have not adverted to the aforesaid requirement, therefore, in my considered opinion, the petitioner has a right to establish her objections to resist the execution of decree in view of the property purchased by her viz.-a-viz. the suit land involved in the execution of the decree.

[13]. At one point of time, the parties were *ad idem* that that there were chances of amicable resolution of the dispute, but later on the same could not fructify and this Court proceeded to hear the arguments on merits.

[14]. For the reasons recorded hereinabove, the impugned orders dated 24.12.2014 passed by the Addl. District Judge,

Jalandhar and 09.12.2014 passed by the Civil Judge (Jr. Divn.), Jalandhar are hereby set aside. The matter is remanded to the executing Court with a direction to decide the objections afresh by way of framing proper issues and allow the parties to lead evidence. The revision petition is accordingly disposed of.

January 08, 2018	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No