

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

**Civil Revision No.6544 of 2018  
Date of Decision:04.10.2018**

**Anil Kumar and others                      .....Petitioners  
Vs  
Pawan Kumar and others                      .....Respondents**

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

Present:Mr. Sanjay Rahtee, Advocate and  
Mr. Harkesh Manuja, Advocate  
for the petitioners.

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**RAJ MOHAN SINGH, J.**

[1]. This revision petition has been preferred by the petitioners against the order dated 18.03.2017 passed by the Addl. Civil Judge (Sr. Divn.) Jhajjar and order dated 16.08.2018 vide which review application against the order dated 18.03.2017 was dismissed by the Addl. Civil Judge (Sr. Divn.)/executing Court, Jhajjar.

[2]. Perusal of the record would show that a Civil Suit No.242 of 1983 for possession in respect of the agricultural land measuring 702 *Kanals* 3 *Marlas* as shown in head note of the plaint was filed by Smt. Khazani Devi D/o Smt. Ram Kaur wife of Ram Nath against Roop Chand, Siri Chand and others. As per pleadings of the suit, originally the suit was filed on 24.09.1982 by Smt. Khazani Devi against Roop Chand etc. Roop Chand

died during pendency of the suit. An application was moved by Smt. Khazani Devi for bringing on record legal representatives of Roop Chand. The said application was allowed and legal representatives of Roop Chand i.e. Smt. Kalawati (daughter) and Chand (son) were brought on record accordingly. The original written statement was also amended to that effect. Ram Nath was the original owner in possession of agricultural land measuring 41 *Bighas* 7 *Biswas* comprised in Khewat Nos.110 and 112 situated in the revenue estate of village Surehti. After the death of Ram Nath, his wife Ram Kaur became owner in possession of the land. Ram Nath and Ram Kaur had no son. Smt. Khazani Devi was the only daughter. After the death of Ram Kaur, plaintiff Khazani Devi became owner of the entire property left by Smt. Ram Kaur including the suit land. Defendants were distant relatives of Ram Nath and they got sanctioned mutation No.1485 in respect of suit land in their favour i.e. Ami Lal, Hira Singh, Nanak and others without any notice to the plaintiff-Khazani Devi. After the death of Ami Lal and others, the land was further mutated in the names of their heirs and wrong entries continued thereafter. Plaintiff further pleaded that after the consolidation, old *Khewats/Khasra* Nos.110 and 112 were converted into new *Khewat* No.80 and 81, total land measuring 699 *Kanals* 7 *Marlas*. On coming to

know about wrong entries in the revenue record, the suit was filed by the plaintiff for possession and declaration that mutation No.1485 was illegal, null and void and the same was not binding upon rights of the plaintiff.

[4]. Defendants contested the suit. Factum of Ram Nath being owner of *Khewat* Nos.110 and 111 was admitted and factum of Ram Kaur being widow of Ram Nath having succeeded the estate of Ram Nath was also admitted. However, it was denied that agricultural land measuring 699 *Kanals* 7 *Marlas* as detailed in the head note of the plaint was allotted to Smt. Ram Kaur in lieu of land comprised in *Khewat* Nos.110 and 112 (old numbers). Defendants also denied that plaintiff was daughter of Ram Nath and Ram Kaur. They pleaded that Ram Kaur was issueless and the defendants were the only legal heirs, who had succeeded all estate of Ram Nath and Ram Kaur by way of mutation No.1485 which was validly sanctioned in their favour by the revenue authorities.

[5]. Both the parties went to trial. The suit filed by the plaintiff-Smt. Khazani Devi was decreed vide judgment and decree dated 18.10.1985 passed by the Sub Judge Ist Class, Jhajjar.

[6]. Defendants remained unsuccessful before the lower

Appellate Court when Civil Appeal No.36/13 of 14.11.1985 titled '*Ram Phal & others vs. Khazani & others*' was dismissed by the Addl. District Judge-IV, Rohtak vide judgment and decree dated 27.03.1987.

[7]. Thereafter RSA No.1791 of 1987 titled '*Ram Phal & others vs. Khazani Devi & others*', was filed in the High Court. The said RSA was dismissed by the High Court vide order dated 03.10.2013. Thereafter Review Application i.e. RA-RS-55-C of 2013 in the aforesaid RSA was filed, which was also dismissed vide order dated 11.02.2016.

[8]. Against the order passed by the High Court in the aforesaid RSA and review application, SLP (C) Nos.16190/16191 of 2016 titled '*Ram Phal (D) through LRs & others vs. Khazani Devi (D) through LRs & others*' was filed in the Hon'ble Apex Court which was dismissed on 11.07.2016.

[9]. Thereafter execution was filed by the decree-holders in which objections were filed by the judgment-debtors/petitioners. The objections were dismissed by the executing Court/Addl. Civil Judge (Sr. Divn.) Jhajjar vide order dated 18.03.2017 against which review application was filed and the same was also dismissed vide order dated 16.08.2018 passed by the Addl. Civil Judge (Sr. Divn.) Jhajjar. That is how the present revision

petition came to be filed against both the aforesaid orders.

[10]. The narration of aforesaid facts would show that the petitioners have lost main litigation upto the Hon'ble Apex Court. In the execution proceedings initiated by the decree-holders, the objections were filed by relying upon voluminous documents/revenue record which has been attached herein also in the form of old revenue records to contend that in fact, the pleadings in the suit were only to the effect that Smt. Ram Kaur was owner in possession of area measuring 41 *Bighas* 7 *Biswas* in *Khewat* No.110 and 9 *Bighas* 16 *Biswas* in *Khewat* No.112. The details of land mentioned in the head note of the plaint to the extent of 702 *Kanals* 3 *Marlas* were wrongly recorded. Thereafter, the Courts below proceeded to decide the *lis* on unfounded facts.

[11]. Learned counsel for the petitioners by relying upon **Selvi vs. Gopalkrishnan Nai (D) Thr. LRs and Ors., 2018(7) SCC 319** submitted that in view of non-consideration of voluminous revenue record by the Courts in hierarchy, the petitioners can rake up the issue in the execution in order to press upon a point that in order to meet the ends of justice, the matter be remitted to the trial Court for decision afresh.

[12]. I have considered the submissions made by learned

counsel for the petitioners.

[13]. In the aforecited precedent, the dispute was confined to the facts of the said case. Survey No.988 was in issue in that case. Various documents filed by the defendant in the case relating to his title to Survey No.988 were ignored by the Commissioner and the Commissioner did not follow the descriptions contained in the ancient documents filed by the defendant before the Court. In the facts and circumstances of the said case, two Commissioners earlier appointed who had inspected the suit properties had filed the reports that the properties were not identifiable. It was only when Advocate as Commissioner was appointed and he had inspected the property Survey No.988 was noticed which was fully within the description of boundaries stated in the plaint. Since the description of the suit property did not contain Survey No.988, therefore, the second defendant did not file any appeal against the preliminary decree and the High Court by referring to the averments in the written statement as to the claim of the second defendant in Survey No.988 did not go into the question of entitlement of second defendant as there was confusion with regard to the boundaries of the suit properties. The Hon'ble Apex Court appreciated the material on record and held that the view taken by the High Court was wrong and the matter was

remitted to the trial Court. The aforesaid judgment was based on the evidence led by the parties in substantive litigation and not like the present one where the voluminous record which is sought to be relied upon in the present revision petition was never the subject matter of consideration before the Courts in hierarchy. Even as per the written statement filed by the defendants, a vague reply was given to para No.1 of the plaint and thereafter no evidence was led to substantiate the stand taken by the defendants.

[14]. An attempt has been made by relying upon the documents, viz. annexures attached with this revision petition to show that the decisions made by the Courts in hierarchy upto the Hon'ble Supreme Court is vitiated on account of wrong appreciation of facts. On a pointed query made by the Court, learned counsel for the petitioners very candidly admitted that the voluminous revenue record as projected herein was never adduced before the civil Court at the time of passing of decree/appeal/Regular Second Appeal and even in SLP. The revenue record is being relied for the first time in the revision petition in order to persuade this Court to take different view on the basis of factual background of the case.

[15]. The perusal of record would show that in the written statement filed by the defendants before the trial Court, para

No.1 of the plaint was only replied to the following effect:-

“1. *That para No.1 of the plaint as stated is wrong and hence, denied. However, it is admitted that Smt. Ram Kaur W/o Ram Nath was the owner of the land mentioned in Khewat No.110 and 112 but it is categorically denied that the suit land mentioned in the title of the suit was allotted to Smt. Ram Kaur W/o Ram Nath in the consolidation operation in the village in lieu of the land mentioned in Khewat No.110 and 112.*”

[16]. In view of aforesaid stand the objection of the defendants was only in respect of the fact that in consolidation proceedings the suit land was never allotted to Smt. Ram Kaur in lieu of *Khewat* Nos.110 and 112. The aforesaid aspect of the case was duly considered by the civil Court and other Courts in hierarchy upto the Hon'ble Apex Court and the suit was decreed in favour of Smt. Khazani Devi.

[17]. The Concept of Finality of Judgement has been explained by the Hon'ble Apex Court in **Indian Council for Enviro-Legal Action vs. Union of India and others., 2011(3) R.C.R. (Civil) 779.** The maxim '*interest Republicae ut sit finis litium*' is to the effect that the litigation must end after a long hierarchy of remedies at some stage. It is necessary to put a quietus. It is rare that in an adversarial system, despite the judges of the highest court doing their best, one or more parties

may remain unsatisfied with the most correct decision. Opening door for a further appeal could be opening a flood gate which will cause more wrongs in the society at large at the cost of rights. The conclusion is that the controversy between the parties must come to an end at some stage and the judgment of the higher court must be permitted to acquire finality. It would be improper to allow the parties to file application after application in the endless process. Finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment.

[18]. Allowing the parties to reopen the concluded judgments on the basis of some untested material would be an abuse of process of law and the same would have far reaching adverse consequences on the administration of justice. A settled thing should not be allowed to be unsettled. The judgment passed by the Hon'ble Apex Court is not amenable to the judicial review that too at the stage of execution on the basis of some material which was never the subject matter of substantive litigation upto the Hon'ble Apex Court. Even correctness of the decision on merits after it has become final upto the Hon'ble Apex Court cannot be questioned by invoking Article 32 of the Constitution of India. The principle of finality of litigation is based on high principle of public policy. It is equally important to prevent

unscrupulous litigant from taking undue advantage through the process of the Court. It is an onerous duty and obligation of the Court to ensure undue enrichment is not drawn by the losing party by exercising the process of the Court, even after finality of litigation upto the Hon'ble Apex Court. While curbing the aforesaid tendency, the Court would be fully justified in imposing punitive costs where legal process has been abused. Doctrine of *stare decisis* is very valuable principle of precedent which cannot be departed in the ordinary circumstances. The view expressed by the Hon'ble Court in **Manganese Ore (India) Ltd. vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124** and **Green View Tea & Industries vs. Collector, Golaghat and another, 2002(2) R.C.R. (Civil) 362** can be relied in the aforesaid context.

[19]. The attempt to re-argue the case which has been finally decided by the higher Court is a clear abuse of process of law regardless of principles of *res judicata*. The Court should not be hampered by any technical rule and interpretation at the time of applying principles of *res judicata*. Doctrine of *res judicata* is not technical doctrine, but a fundamental principle which sustains rule of law in ensuring finality in litigation. Therefore, the aforesaid principle has a universal application and is based on the principle which means that it is in the interest of the State

that there should be an end to the litigation. No one should be vexed twice in the litigation for one and the same cause. Even the party can be bound down by constructive *res judicata* i.e. an issue which was known to a party not raised in proceedings. The issue cannot be raised in subsequent proceedings, the doctrine of constructive *res judicata* will apply. While applying the principle of *res judicata*, the Court should not be hampered by any technical rule of interpretation. The principle of law highlighted by the Hon'ble Apex Court in **M. Nagabhushana vs. State of Karnataka & Others, 2012(1) R.C.R. (Civil) 807** can be relied.

[20]. Perusal of the record would show that the decree-holders have sought to execute the decree dated 18.10.1985 in its letter and spirit by mandating the judgment-debtors to remove the unauthorized possession/encroachment to deliver possession of the suit property of the decree-holders. The executing Court cannot go beyond the decree, nor it can enlarge the scope of execution proceedings. The executing Court cannot grant any such relief which is not discernible in terms of decree in execution. The executing Court is bound by the terms of decree and cannot add or subtract anything from the decree on its own notion. The view expressed by the Hon'ble Apex Court in **Vedic Girls Senior Secondary School**

vs. Rajwanti (SC) 2007(2) SCT 272 had endorsed the earlier view expressed by the Court in State of Punjab vs. Krishan Dayal Sharma, AIR 1990 SC 2177. In Pratibha Singh vs. Shanti Devi Prasad (2003) 2 SCC 330, the Hon'ble Apex Court held that no technical objection to defeat the decree should be entertained. The decree by competent Court after becoming final between the parties must be honoured to the hilt.

[21]. The effort made by learned counsel for the petitioners that the decisions rendered by the Courts in hierarchy were vitiated on account of fraud cannot be appreciated at the stage of execution as the ingredients of fraud were never pleaded before the Courts in hierarchy, nor any evidence was led much less the evidence which is now sought to be relied in the present revision petition.

[22]. Having considered the controversy in the light of aforesaid facts and legal position, I do not see any error of jurisdiction in the impugned orders passed by the executing Court/Addl. Civil Judge (Sr. Divn.) Jhajjar. This revision petition is dismissed accordingly.

October 04, 2018

Atik

**(RAJ MOHAN SINGH)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No