

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

CR No.7087 of 2018

Date of Decision : 26.10.2018.

Maharishi Markandeshwar University Trust Mullana, District Ambala

...Petitioner

versus

Mahinder Kumar Saini and another

...Respondents

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

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

Mr. Fateh Saini, Advocate for respondent No.1.

Mr. S.S. Dinarpur, Advocate for respondent No.2.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed challenging order dated 01.10.2018, passed by the learned Civil Judge (Junior Division), Ambala, dismissing the objections filed by the objector/petitioner to the execution proceedings instituted by plaintiff/respondent No.1 qua judgment and decree dated 27.2.2011 passed in his favour and against respondent defendant/respondent No.2 as upheld by the learned Appellate Court vide judgment and decree dated 02.08.2013.

2. Learned counsel contends that the executing court failed to take into account that principle of *lis pendens* would not be applicable in a situation involving collusion between the parties to the suit. Learned counsel further contends that despite plaintiff/respondent No.1 having produced sale deed executed by defendant/respondent No.2 dated 29.04.2010 in favour of the petitioner/objector, no attempt was made to

implead the petitioner/objector as a party to the petition either by plaintiff/respondent No.1 or for that matter defendant/respondent No.2, thereby the petitioner was deprived of the opportunity of defending his interest before the learned Civil Court. Learned counsel contends that be that as it may, petitioner/objector has filed an application for impleadment as a party in RSA No.314 of 2014 instituted by defendant/respondent No.2 before this Court and that despite application having been moved by the petitioner/objector in the aforesaid RSA about two years ago, till date no reply has been filed and the case is now listed for 30.10.2018. Learned counsel contends that the collusion between plaintiff/respondent No.1 and defendant/respondent No.2 *prima facie* stands proved from the fact that despite order having been passed by the learned trial Court in favour of plaintiff/respondent No.1 on 21.12.2006, the same was never got implemented in the revenue record and despite plaintiff/respondent No.1 having come to know about the execution of a sale deed by defendant/respondent No.2 in faovur of the petitioner/objector on 29.04.2010, no proceedings were initiated by the plaintiff/respondent No.1 under Order 39 Rule 2-A CPC. Learned counsel states that the executing proceedings are fixed for today in which warrants of possession have already been issued and that some protection be granted to the petitioner/objector in order to enable him to agitate his rights before this Court in RSA No.314 of 2014 which is listed for 30.10.2018.

3. On the other hand, learned counsel for respondent No.1 states that he would have no objection if the revision petition is disposed of by

directing the learned Executing Court to keep the executing proceedings in abeyance for three months.

4. I have heard learned counsel for the parties.

5. Taking into account all aspects of the matter, I deem it appropriate to direct the learned Executing Court to keep the execution proceedings in abeyance for a period of three months from today, in order to enable the petitioner to avail remedy available to him in accordance with law. At this stage, learned counsel for plaintiff/respondent No.1 states copy of application for impleadment of the petitioner/objector as party filed in RSA No.314 of 2014, has not been supplied to him. Learned counsel for the petitioner states that although copy of the application for impleadment was filed approximately two years ago and supplied to learned counsel for respondent No.1, yet in order to obviate any controversy, he would furnish a fresh copy to learned counsel for respondent No.1 during the course of the day. On needful being done, learned counsel for plaintiff/respondent No.1 states that the plaintiff/respondent No.1 would file reply to the application for impleadment as filed by the petitioner/objector in RSA No.314 of 2014 by 30.10.2018.

6. Revision petition is disposed of in aforementioned terms. Further action in the matter as warranted under the law would be taken by the learned Executing Court on the expiry of period of three months.

(B.S.WALIA)
JUDGE

26.10.2018

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No