

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7501 of 2017 (O&M)

Date of decision:05.02.2018

Iqbal Kaur and others

... Petitioners

Vs.

Lachhman Singh (deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.S.Virk, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioners – Iqbal Kaur, Maninder Singh, Sarabjit Kaur and Paramjit Kaur (being widow and daughters of Bhag Singh son of Hari Singh, respectively) assailed the order dated 25.08.2017 (Annexure P-10), passed by Additional Civil Judge (Junior Division), Samrala, whereby, the application raising the objections of issue qua warrants of possession in view of the judgment and decree dated 05.7.2013 passed in suit for specific performance of the agreement to sell, has been dismissed.

Mr.D.S.Virk, learned counsel appearing on behalf of the petitioners submitted that this case had a chequered history. In fact, Hari Singh was owner of land measuring 82 kanals allotted to him by the Government. He had left two sons namely Baljinder Singh & Bhag Singh and his wife/widow Amrik Kaur. Amrik Kaur allegedly entered into an agreement to sell with one Lachhman Singh on 25.11.1993 in respect of the

land in question. Lachhman Singh filed a suit for specific performance with regard to aforesaid agreement to sell. The trial Court on the basis of the evidence did not grant the discretionary relief under Section 20 of the Specific Relief Act, 1963 but ordered for recovery of ₹2 lacs.

He further submitted that suit was filed on the premise that vendor Amrik Kaur had agreed to sell the land at the rate of ₹1,20,000/- per killa against the payment of earnest money of ₹1 lac and stipulated date for execution and registration of the sale deed was 25.06.1994. In the meanwhile, the plaintiff-Lachhman Singh died and was survived by widow-Swaranjit Kaur, who preferred an appeal bearing No.74 of 2006 against the judgment and decree dated 20.02.1999 granting the alternative relief. The Lower Appellate Court, vide judgment and decree dated 05.07.2013 allowed the appeal and granted the discretionary relief. In essence, specific relief was granted and the defendants therein were directed to execute the sale deed, failing which liberty was granted to the plaintiffs to get the same executed with the assistance of the Court.

Amrik Kaur died on 29.08.2008. Thereafter, her son - Bhag Singh came to know about the aforesaid agreement to sell. He filed a civil suit bearing No.207 of 10.06.2009 for declaration to the effect that he is owner in possession of the land on the basis of some family settlement/ agreement dated 29.06.2002 having a birth right and also claimed adverse possession.

Bhag Singh, unfortunately went missing and the suit aforesaid

was dismissed in default, vide order dated 23.08.2011 (Annexure P-2). Revision petition was filed but the same was dismissed on the premise that the suit was dismissed under the provisions of Order 9 Rule 8 CPC. Since the sale deed was not executed, the Executing Court appointed the Local Commissioner for execution of the same and the petitioners were not able to appear before the Lower Appellate Court being legal heirs of Bhag Singh as period of 07 years had not elapsed.

During the pendency of aforementioned proceedings, the petitioners filed a civil suit before the Additional Civil Judge (Senior Division) Samrala for declaration that they are owners in possession of suit land, with a further prayer of permanent injunction restraining the defendants from alienating and interfering into peaceful possession. The trial Court, vide order dated 14.07.2016 (Annexure P-7) granted the status quo. However, with the assistance of the Local Commissioner, the sale deed was executed and the trial Court, vide order dated 31.08.2016 issued the warrants of possession returnable for 10.10.2016. It is in this backdrop of the matter, the objection petition on behalf of the petitioners espousing the cause of Lachhman Singh being LR of Bhag Singh, has been filed. The said objection petition has erroneously been dismissed. He submitted that the impugned order is not sustainable in the eyes of law as two contradictory orders have been passed. If there is already status quo order in the suit, warrants of possession cannot be issued. The fact of the matter is that status quo order is still existing and the petitioners are in cultivating possession since long, after Bhag Singh had gone missing and serious prejudice would

be caused in case, warrants of possession are not re-called.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Virk, as filing of the objections was nothing but adoption of delaying tactics, in order to thwart the execution of the decree already passed in favour of the agreement holder/vendee. Concededly, Amrik Kaur was owner of the property and she had executed the sale deed. Amrik Kaur, widow of Hari Singh, survived by two sons namely Baljinder Singh and Bhag Singh. The vendor, in case of death during subsistence of agreement to sell bound the legal representatives to perform their part of contract. One of the legal heir, i.e., Amrik Kaur had contested the appeal preferred by Swaranjit Kaur against the judgment and decree of the trial Court, whereby alternative relief was granted, therefore, they cannot set up a separate stand than the one already taken by Amrik Kaur.

It is settled law that LR's cannot set up an independent right against the defence taken by their predecessor, who have already filed written statement, until and unless they are independently impleaded.

The aforementioned view of mine is drawn from the ratio decidendi culled out by the Supreme Court of India in **Vidyawati Vs. Man Mohan AIR 1995 SC 1653**.

It is also settled law that in each and every case, all the legal representatives are not required to be brought on record, the purpose has to be seen whether the estate was effectively represented or not. The

aforementioned view of mine is drawn from the ratio decidendi culled out by the Division Bench of this Court in paragraph 6 of the judgment rendered in **Sardara Singh and another vs. Harbhajan Singh and others 1974 PLJ 341.**

Amrik Kaur herself defended the suit and the judgment and decree dated 05.07.2013 had attained the finality. Status quo order is an ex parte order, it is yet to be decided whether the status quo order can be confirmed subject to defence of the defendants therein.

In my view, it was an attempt to delay the adjudication of the decree of specific performance, whereby, the sale deed had already been executed. Even otherwise, the impugned order is dated 25.08.2017 and it has not been brought to the notice of this Court as to what transpired after that.

I do not find any illegality and perversity in the order under challenge, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No