

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

CR-8206-2018

Decided on: December 03, 2018.

Baljit Kaur

.... Petitioner

Versus

Jaswant Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ravi Gakhar, Advocate
for the petitioner.

LISA GILL, J (ORAL)

Petitioner is aggrieved of order dated 21.11.2018 passed by the learned Civil Judge (Senior Division), Fatehgarh Sahib dismissing her application under Order 1 Rule 10 C.P.C for being impleaded as a decree-holder in the execution proceedings filed by the decree-holder, Jaswant Singh, pursuant to judgement and decree order 12.12.2015 passed in the civil suit filed by decree-holder-Jaswant Singh against Gulzar Singh, who is none other but husband of the petitioner.

Brief facts necessary for the adjudication of the case are that a suit for possession of property by way of suit for specific performance of agreement to sell dated 16.11.2009 which was executed between Jaswant Singh and the petitioner's-husband, was filed by Jaswant Singh. The matter was compromised between the petitioner's husband and Jaswant Singh who suffered a statement, which is attached along with judgement and decree dated 12.12.2015 (Annexure P-6). Jaswant Singh stated that the decree shall be deemed to be executed on receipt of sum of ₹4,75,000/- from the petitioner's-husband-Gulzar Singh on or before 10.06.2016 and in case of default on the part of husband of the petitioner, Jaswant Singh would be

entitled to get the sale deed executed in his favour. The amount in question was admittedly not paid by the petitioner's-husband. Execution proceedings were initiated by Jaswant Singh for execution of the sale deed in his favour apparently because the amount in question has not been paid by the petitioner's-husband as per the compromise.

Gulzar Singh was proceeded against *ex parte* in the execution proceedings. The present petitioner moved an application for being impleaded as a decree-holder on the basis of an *ex parte* decree dated 16.01.2014 passed in her favour by the learned Civil Judge (Senior Division), Fatehgarh Sahib (Annexure-P4).

The petitioner had filed a suit against her husband Gulzar Singh seeking recovery of maintenance at the rate of ₹15,000/- per month by creating a charge over the suit property which is the subject matter of the present proceedings. Petitioner's-husband was proceeded against *ex parte* in the suit filed by her and decree in favour of the present petitioner was passed.

It is vehemently argued by learned counsel for the petitioner that the decree has been passed prior in time to the decree in favour of Jaswant Singh. Moreover, decision dated 16.01.2014 has attained finality as Gulzar Singh never challenged the same. It is thus prayed that the present petition be allowed.

I have heard learned counsel for the petitioner and have also gone through the file.

Learned Civil Judge (Senior Division), Fatehgarh Sahib has specifically observed that an application dated 05.12.2012 (Annexure P-3) under Order 1 Rule 10 C.P.C., was moved by the petitioner for being

impleaded as a party in the civil suit filed by Jaswant Singh. The said application was dismissed vide order dated 19.03.2014 (Annexure P-5). It is mentioned in order dated 19.03.2014 that the suit claiming maintenance by creating a charge over the property of the defendant was instituted on 13.12.2012 i.e. much after the execution of the agreement to sell dated 16.11.2009. It is further noted that the petitioner's husband was contesting the suit actively and had also filed another suit for permanent injunction regarding the suit property against respondent no.1. Therefore, collusion between the petitioner's husband and respondent no.1 was ruled out. Petitioner has not challenged order dated 19.03.2014 (Annexure P-5).

As per the memo of parties, both the petitioner and her husband are reflected to be residents of village Nabipur, Tehsil and District Fatehgarh Sahib. Learned counsel for the petitioner on a specific query is unable to point out whether they are living together or separately and whether any other proceedings in respect to their alleged marital discord are pending.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 21.11.2018, passed by the learned Civil Judge (Sr. Division), Fatehgarh Sahib, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed with no order as to cost.

December 03, 2018
tarun/s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No