

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.908 of 2018

Date of Decision: February 12, 2018

Surinder Pal Singh

...Petitioner

Versus

Ram Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.R.N.Moudgil, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

This case has a chequered history.

The present revision petition is directed against the order dated 13.12.2017 (Annexure P-1), whereby the objection petition preferred by the petitioner son of Mangal Singh and as well as Parkash Kaur vendor, has been dismissed.

Mr.R.N.Moudgil, learned counsel representing the petitioner submits that Parkash Kaur, who was owner of the house in dispute, had executed an agreement to sell dated 3.6.2013 in respect of house measuring 8 marlas, situated in Anandpur Sahib, District Rupnagar with Ram Singh and Tejwant Kaur. The aforementioned agreement to sell could not be performed necessitating the vendees to institute the suit. The suit was decreed by the trial Court vide judgment and decree dated 4.8.2011. The appeal preferred was also dismissed and the Regular Second Appeal No.3535 of 2012 is pending adjudication in this Court and is listed for hearing on 3.7.2018. There is no interim order in the aforementioned Regular Second Appeal.

Mr.Moudgil further submits that the civil suit filed by Surinder Pal Singh and Amrik Singh against Ram Singh Bawa and Tejwant Kaur challenging the aforementioned judgment and decree on the premise that the house in dispute purchased in the name of Parkash Kaur by the father, namely, Mangal Singh was out of the sale of the property, which was an ancestral property, is pending adjudication. However, since there is no interim stay in the appeal, an execution application was filed by the decree-holders. In those proceedings, third party objections have been filed, but the same have been dismissed summarily without framing the issues. In fact, the Court below was swayed away from the fact that already a civil suit had been filed. The Court was required to frame the issues as the petitioner had set up a title in the property on the premise that he had a right by birth in the property. Since the aforementioned objection petition has been dismissed without framing the issues, the appeal as envisaged under Order 21 Rule 103 CPC would not lie, but only a revision. In support of his contention, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Sameer Singh and another Versus Abdul Rab and others, 2014 (4) RCR (Civil) 914**, wherein in Paragraph 22, a similar observation was noticed by the Supreme Court and the matter was remanded to the High Court on the premise that once there has been no adjudication, if a subordinate Court exercises its jurisdiction not vested in it by law or fails to exercise the jurisdiction so vested, only the revision would lie.

I have heard the learned counsel for the petitioner and appraised the paper book.

In the first blush, Mr.Moudgil had raised the objection that impugned order would be appealable. This Court is of the view that the

revision would be maintainable.

Now the question posed before this Court is where a party had already availed the remedy of a suit, can he/she be permitted to institute the third party objections as envisaged under Order 21 Rules 97 or 99 CPC, the answer would be “No”, for, such party cannot be permitted to initiate the parallel proceedings, i.e., (i) suit; and (ii) simultaneous objections. The suit is prior in time than the objections. It would be apt to reproduce provisions of Order 21 Rules 98 to 103 of CPC:-

“ORDER XXI-EXECUTION OF DECREES AND ORDERS

[98 . Orders after adjudication— (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99 . Dispossession by decree-holder or purchaser— (1) Where any person other than the judgment-debtor is dispossessed of

immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100 . Order to be passed upon application complaining of dispossession— Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101 . Question to be determined— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102 . Rules not applicable to transferee pendent lite— Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation—In this rule, "transfer" includes a transfer by operation of law.

103 . Orders to be treated as decrees— Where any application has been adjudicated upon under rule 98 or rule 100 the other made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.]”

Rule 101, ibid, provides that all the questions relating to right, title or interest in the property relevant for the adjudication of the application, shall be dealt with the application and not by a separate suit. The remedy for the petitioner was to seek the interim stay in the aforementioned suit or in the pending Regular Second Appeal, but not to file objections. This Court, vide order dated 5.9.2016 had not allowed the petitioner to be impleaded as legal representative of Parkash Kaur as it was pleaded that there was clash of interest. They were never prevented to seek impleadment in independent capacity by moving an application under Order 1 Rule 10 CPC. The aforementioned finding of mine is derived from the ratio decidendi culled out in **Vidyawati Versus Man Mohan & others, 1995 (5) SCC 431**. In this backdrop of the matter, I am of the view that the trial Court has rightly dismissed the objections in a summary manner. There was no occasion for the trial Court to frame the issues owing to the pendency of the civil suit. It was incumbent upon the objector to place on record some evidence before the Court enabling it to frame the issues by setting up a title, i.e., right by birth in the ancestral property. An agreement to sell can always be performed by the legal heirs in case of demise of the vendor. The relationship of the petitioner being son of Parkash Kaur has not been denied. In my view, there was no need of framing the issues owing to the pendency of the suit.

Mr.Moudgil during the course of the hearing, has referred to

the judgment rendered by this Court in **Gram Panchayat, Hasanpur Versus Jagdish Chand and others, 2007 (4) RCR (Civil) 636** with regard to the procedure prescribed under Order 21 Rule 99 and 101 CPC. There is no dispute to the aforementioned judgment, but the fact of the matter here is that the remedy has already been availed of and in the absence of any *prima-facie* proof of right by birth, no interference is warranted.

There is another aspect of the matter. Concededly, Parkash Kaur was owner of the property by virtue of sale deed of 1967, thus, she, as per the provisions of Section 14(1) of the Hindu Succession Act, was absolute owner.

For the reasons stated above, no ground for interference is made out. Revision petition stands dismissed.

Any observation of mine shall not be construed as an expression of opinion vis-a-vis the pending suit, alleged to be pending at the instance of the petitioner.

February 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No