

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8911 of 2017

Date of decision:16.01.2018

Shanti Devi @ Harpyari (deceased) through LRs and
others

... Petitioners

Vs.

Ramnarain

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Adarsh Jain, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-judgment debtors are aggrieved of the impugned order dated 15.01.2016, whereby, warrant of symbolic possession has been issued in favour of the decree holder/plaintiff.

Mr. Adarsh Jain, learned counsel for the petitioner-judgment debtors submitted that Balmukand was owner of the land, who unfortunately expired on 26.04.1968. The property by way of natural succession was inherited by a widow, four sons and one daughter. The petitioners instituted a civil suit on 05.12.1992 against Ram Narain, i.e., plaintiff in the decree, *ibid* and Shanti, who was daughter, though later on given up. As per the judgment and decree dated 01.02.1993 (Annexure P-6), the entire property was ordered to be mutated to the extent of ½ share in

favour of the plaintiffs in the aforementioned suit and ½ share in favour of Ram Narain. The aforementioned judgment and decree was challenged by Ram Narain (defendant No.1 in the previous suit) and also set up a Will dated 05.09.1967. The said suit was dismissed by the trial Court, vide judgment and decree dated 7.08.2007. However, the appeal was partly allowed, vide judgment and decree dated 07.09.2009 (Annexure P-1). The trial Court, vide order dated 29.01.2011, passed the following order :-

“Present: Sh. K.P.Sharma, adv. for the DH.

Sh. R.D.Parashar, adv. for the applicant.

DH Ramnarain appeared in Court and made a statement that the symbolic possession has been delivered to him and he does not want to proceed with the petition. Hence petition is dismissed as fully satisfied. File be consigned to the record room after due compliance.

Sd/-

Civil Judge (Jr. Divn.) Palwal

29.1.2011”

The aforementioned order was sought to be recalled, resulting into passing of the impugned order dated 15.01.2016. He further submitted that as per the judgment and decree dated 07.09.2009, Ram Narain would be getting 57 marlas, i.e., 1/5th share and remaining brothers 38 marlas each and thus, the order under challenge requires to be set aside.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that there is no whisper or any reason assigned

in not assailing the order during the period of 2 years.

No doubt, the present revision has been preferred by invoking the provisions of Article 227 of the Constitution of India but it cannot be lost sight of the fact that prior to the amendment in provisions of Section 115 of CPC, any interim order was revisable subject to limitation of 90 days but party must approach within reasonable time.

Coming to the merits of the matter, it would be apt to extract paragraph 25 of the judgment and decree dated 07.09.2009 which read thus:-

“25. In view of my findings on issue no.3, it is held that judgment and decree dated 1.2.1993 are not binding on the rights of defendants No.1 and 5. No rights in favour of defendants No.1 and 5 arise out of judgment and decree dated 1.2.1993. The share mutated in the name of defendant No.1 to the extent of 1/5th share before passing of decree dated 1.2.1993 shall not be effected. Since no rights had accrued in favour of defendant No.1, therefore, transfer of property vide judgment and decree dated 13.12.1997 in excess of 1/5th share in suit property is not binding on the right of plaintiff and is to that extent set aside. Appeal is therefore, partially allowed to this extent only. Cross objections filed by objector Neeta Sharma are disposed off granting alternative relief sought by her that judgment and decree dated 1.2.1993 is not binding

against her rights to the extent of 1/5th share in suit property. Decree sheet be prepared accordingly. LCR be returned back with copy of this judgment and appeal filed be consigned to records after due compliance.”

Decree

“It is ordered that judgment and decree dated 1.2.1993 are not binding on the rights of defendants No.1 and 5. No rights in favour of defendants No.1 and 5 arise out of judgment and decree dated 1.2.1993. The share mutated in the name of defendant No.1 to the extent of 1/5th share before passing of decree dated 1.2.1993 shall not be effected. Since no rights had accrued in favour of defendant No.1, therefore, transfer of property vide judgment and decree dated 13.12.1997 in excess of 1/5th share in suit property is not binding on the right of plaintiff and is to that extent set aside. Appeal is therefore, partially allowed to this extent only. Cross objections filed by objector Neeta Sharma are disposed off granting alternative relief sought by her that judgment and decree dated 1.2.1993 is not binding against her rights to the extent of 1/5th share in suit property.”

The operative part of the order dated 15.01.2016 reads thus:-

“11. Now this execution petition application has been filed by plaintiff in which he has pleaded that revenue authorities be

directed to correct the entries in revenue record. The objections which were filed by JD No.1(iv) have become redundant in view of the dismissal of RSA dated 24.8.2010. Total suit property was 14 kanal 8 marla i.e. 288 marla. Defendant No.1 gets a share of 57 marla in the suit property which is 2 kanal 17 marla. Remaining property is 231 marla. Plaintiff is entitled to half share of 231 marla which becomes 115.5 marla i.e. 5 kanal 15 marla. Defendants No.2 to 4 are entitled for remaining 5 kanal 15.5 marla property. The AC First Grade is directed to correct the entry in the revenue record accordingly. Warrant of symbolic possession be issued in favour of decree holder/plaintiff to his extent for 06.02.2016.”

On cumulative reading of the aforementioned orders, I am of the view that the impugned order is perfectly legal and justified as the judgment and decree dated 07.09.2009 has only kept the interest of the sister to the extent of 1/6th share, as intact and other brothers would get ½ share in the remaining part of the land and not all brother would get 1/5th share as submitted by Mr. Jain, the said contention is untenable and rejected.

In view of the aforementioned finding, no ground is made out for interference in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

January 16, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No