

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

ESA No.30 of 2012 (O&M)
Date of decision: 29.08.2018

Rajender and others

... Appellants

Vs.

Ran Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Kumar Goyal, Advocate
for the appellants.

Mr. Harkesh Manuja, Advocate
for respondent No.1.

AMIT RAWAL J.

The appellants/third party objectors have not been successful in setting aside the judgment and decree dated 11.10.2005 rendered in civil suit No.225 of 2003/2005 titled as “Ran Singh Vs. Raj Singh”, whereby, decree holder/plaintiff was found entitled to the disputed property in a suit for possession.

Ran Singh had instituted the suit for possession against Raj Singh in respect of a plot measuring 140 square yards. As per the description given in the suit, during the pendency of aforementioned suit, Ran Singh had suffered a collusive decree in favour of defendant-Raj Singh, vide judgment and decree dated 20.10.1995 on the premise that he had been owner in possession of the suit property but Raj Singh having been in illegal and unlawful possession of the property as defendant had lost the right and title in the property by virtue of judgments and decrees dated dated

20.10.1995 and 13.12.2002.

The aforementioned suit despite contest was decreed by the trial Court and civil appeal bearing No.90 of 2005 laid on behalf of the defendant before the Lower Appellate Court was dismissed.

The execution application bearing No.13 of 2006 preferred by the plaintiff, wherein, Rajender, Rajbir sons of Ragbir Singh, Virender, Naresh, Satish sons of Ramdhari preferred third party objections on the premise that neither the decree-holder nor judgment-debtor disclosed the fact that suit property was ancestral property of decree-holder and judgment- debtor much less that of objectors and other co-sharers as it came from one Salak Ram son of Chainsukh ancestors of judgment debtor and decree holder. The suit property came into succession of inheritance jointly to the legal representatives of Salak Ram namely Nathu and Naurang as per their shares reflected in the pedigree table and after their death, came into succession/inheritance jointly to the LRs of Nathu and Naurang namely Dharam Singh, Ganeshi, Jage, Jitu, Heera Lal. After demise of Dharam Singh, Ganeshi, Jage, Jitu, Heera Lal to their LRs namely Randhir, Ranbir, Ramdhari, Mange, Bedu, Bijender, Ram Dhan and Ram Singh and thereafter to Rajender, Rajbir, Naresh, Virender and Satish and as well as judgment debtor and in the same way into the share of inheritance of other co-sharers.

It was alleged that decree holder was owner of 1/4th share i.e. 35 square yards of the suit property. Jasbir and Harbir sons of Ramdhan to the extent of 1/4th share i.e. 35 square yards. Raj Singh and his brothers

namely Mahender, Ravinder, Krishan, Devi Ram to the extent of 1/24th share. It was stated that the property had not been partitioned by metes and bounds, which was initially used by objectors and remaining co-sharers. Rajender Singh and Rajbir raised the construction of boundary wall, one room shed of animals as well as one toilet and remaining objectors had been using the same for tethering cattles, storing fodder etc. and Rajender and Rajbir being co-sharers cannot be dispossessed while seeking execution of the judgment and decree dated 11.10.2005.

It was further alleged that decree holder and judgment debtor in collusion with each other by forfeiting the rights of the objectors obtained the decree, whereas, decree holder never remained in possession of the suit property during his life time as he was in army service. The objectors acquired the knowledge of the present execution petition when the decree holder approached the objectors for delivery of the possession.

The aforementioned petition was contested by decree holder by raising preliminary objections being time barred, not maintainable. It was averred that litigation between the parties to the lis in a suit aforementioned was in the knowledge of objectors but intentionally did not raise the objections. An attempt had been made to delay the execution of the decree in collusion with judgment debtor. On merit, it was denied that property was ancestral. The father of decree holder Hira Lal was exclusive owner of the suit property which was obtained from his father Naurang in the partition during the life time of his father Salak Ram, therefore, the objectors did not have any right or title in the property. The objectors intended to create

confusion by misrepresentation of the facts before the Court with ulterior motive. The status of the property was no longer joint. It was denied that objectors were in exclusive ownership of the property.

On the basis of the aforementioned pleadings, the trial Court dismissed the objections and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. Amit Kumar Goyal, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in not treating third party objections in consonance with the provisions of Order 21 Rule 101 of CPC as obligation was assigned to the trial Court to frame the issues on receipt of the objections as decision thereon had the trappings of the decree which was assailed before the Lower Appellate Court. The suit for possession in respect of property measuring 140 square yards out of the total land having more area as objectors were not having any notice of the suit which was filed at bar. The plaintiff did not intentionally implead the objectors as he had the knowledge of the fact that suit property was in their possession. Both the parties in the suit had misled the Court in order to secure the findings of possession of property with intention to avoid the rigmarole of partition proceedings. Neither the decree-holder nor the judgment-debtor lived in the village, for, residence of decree holder is of Gurgaon and that of judgment debtor at Delhi. This fact is evident from the report of bailiff, Annexure A-5. No independent evidence had been led by the parties to establish that conscious and physical possession of the suit property was of the objectors. The cause of action

accrued to the aforementioned only on 07.11.2010 when the plaintiff had obtained the warrant of possession.

Per contra, Mr.Harkesh Manuja, learned counsel appearing on behalf of respondent No.1/decree holder submitted that there was no occasion for the trial Court to frame the issues, for, no documentary evidence in order to *prima facie* establish the possession, had been placed on record. The objection petition was filed with intention to delay the execution of the judgment and decree in collusion with judgment debtor. There was a categoric admission of the objectors *vis-a-vis* possession of the suit property with the defendants. The objectors had been claiming the possession from 03.07.1993. On merits, it was submitted that the suit property is ancestral but it was denied that the objectors have any share or concern with the property. It was further submitted that father of DH namely Heera Lal was the exclusive owner in possession of the suit property who obtained the same from his father Naurang and Naurang obtained the same by way of family partition during the time of his father Salak Ram, thus, the objectors were left with no right and title in the said property.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Amit Kumar Goyal, for, no doubt, third party objections have to be dealt in the manner prescribed in Rule 101 of Order 21 of CPC but it is not a straight jacket formula. In order to bring the case within the aforementioned provisions, it is necessary for the third party objectors to *prima facie* establish by annexing the list of documents in support of the

objections. On going through the record of the case and even when a query was raised to the counsel, answer was in negative, in other words, objectors did not disclose any document *prima facie* to establish their possession.

In such circumstance, in my view, the trial Court rightly did not frame the issues and discussed the objections summarily. The judgment and decree dated 11.10.2005 being executed by the decree holder is based upon the evidence brought on record. However, the objectors had not been able to bring on record any other material than the one noticed by the trial Court enabling the Executing Court to frame the issues or to form a different opinion. The plea of judgment debtor with regard to owner in possession of the suit property was also negated, wherein, defendant-Raj Singh was held to be not owner of the suit property. The aforementioned findings of facts was arrived at owing to the judgment and decree dated 10.10.1995 rendered in civil suit No.655.

It is a matter of record that the aforementioned judgment and decree has not been set aside. In such circumstances, if at all the objectors were actually and were in possession, some efforts have been made to assail the aforementioned findings.

As an upshot of my findings, I do not find any illegality and perversity in the findings rendered by the Executing Court and Appellate Court in dismissing the objections.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

August 29, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No