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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 22.5.2018

ESA No. 65 of 2014 (O/M)

Ashok Kumar

..... Appellant

Versus

Sunil Kumar and others

..... Respondents

ESA No. 2 of 2015 (O/M)

Amar Lal

..... Appellant

Versus

Sunil Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sumeet Mahajan, Senior Advocate, with,
Ms. Ramneeq Kaur and Mr. Amit Kohar, Advocates,
for appellants in both cases.

Mr. Shailendra Jain, Senior Advocate, with,
Mr. Harman Jivtesh Singh, Advocate,
for respondent No. 1 in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

By this single order, I shall dispose of two connected abovenoted executions second appeals, as both are arising out of same impugned order. For brevity, facts have been taken from ESA No. 2 of 2015.

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Impugned in present execution second appeal is judgment dated 6.12.2014, passed by learned Additional District Judge, Bhiwani, affirming judgment and decree dated 30.9.2014, passed by learned Civil Judge (Junior Division), Bhiwani, vide which objections of present appellants Amar Lal, Ashok Kumar and some others were dismissed.

Brief history of case is that Sunil Kumar decreeholder filed a suit against Ram Lal son of Kala Ram for specific performance of agreement of sale dated 28.5.1993 regarding the house situated at Krishna Colony, Tehsil and District Bhiwani. Said suit was decreed, vide judgment dated 24.7.2001, passed by learned Civil Judge (Junior Division), Bhiwani. Said judgment and decree has admittedly become final. Ashok Kumar son of Raj Rani, daughter of Kalu Ram alias Kala Ram and Amar Lal, son of Shanti Devi, daughter of Kalu Ram alias Kala Ram alongwith some LRs of Ram Lal filed objections. In the objections, it was stated that decreeholder Ram Lal was having 1/3rd share in disputed house. It was stated that Kalu Ram who died in the year 1988 was succeeded by Ram Lal and his two sisters Raj Rani and Shanti Devi. Therefore, each of them got 1/3rd share in said house. However, in the municipal records, name of Kalu Ram alias Kala Ram is mentioned as owner of property. Raj Rani and Shanti Devi were entitled to inherit said property. Both of them had died and Ashok Kumar and Amar Lal are their legal heirs. Therefore, decree cannot be executed regarding their 2/3rd share. Objections were initially dismissed, but case was remanded back for giving opportunity to both the parties for leading evidence. Thereafter, following issues were framed :-

1. Whether the objections filed by objectors Ashok Kumar and Amar Lal as well as objections filed by objectors Virender, Mamta, Reshma,

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Diksha and Meenu are acceptable ? OPO

2. Whether the objections filed by objectors Ashok Kuma and Amar Lal as well as objections filed by objectors Virender, Mamta, Reshma, Diksha and Meenu are not maintainable in present form ? OPR

3. Whether the objectors have no locus standi or cause of action to file present objections ? OPR

4. Relief.

The learned Civil Judge (Junior Division), Bhiwani, while deciding issue No. 1, took the view that Raj Rani died in the year 2000 and Shanti Devi died in the year 1997. The agreement to sell was executed on 28.5.1993. During their lifetime, Shanti Devi and Raj Rani made no effort to claim their share in suit property. The objector Ashok Kumar lives in Hansi and judgment debtor and children are living in said house. It was continuously used by JD and at no point of time, there occurred any dispute regarding share of house. Objectors Ashok Kumar and Amar Lal never tried to get their share in said house. Therefore, Raj Rani and Shanti Devi impliedly relinquished their right in favour of JD. The learned Civil Judge (Junior Division), Bhiwani, further noticed that there is also a tendency that daughters usually do not claim their share in property of father, though they are legally entitled to same. But, now daughters are claiming their share in property. Since property was not claimed by Shanti Devi and Raj Rani after death of their father, therefore, they are deemed to have given up their right in property. It was further noticed that they were aware about pendency of civil suit and execution. It was further noticed that Ashok Kumar and Amar Lal file civil suit claiming 1/3rd share each alongwith their sisters in said house, in which JD was impleaded as defendant No. 1 and

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decreeholder as defendant No. 2. Said civil suit was withdrawn on 15.5.2012. Said order was not challenged. As such, objections were dismissed. In appeal, the learned Additional District Judge, Bhiwani, took more or less same view.

I have heard learned senior counsels for both parties and have also carefully gone through file.

I am of the view that admittedly, Kala Ram was original owner of house. He left behind three legal heirs Ram Lal, Shanti Devi and Raj Rani. By operation of law, each of them got 1/3rd share in said house.

Now, question would arise that merely on the basis of supposition, Ram Lal is deemed to have become owner of said house and by not taking any step to get their names incorporated in municipal records, Shanti Devi and Raj Rani deemed to have relinquished their share? I find reply in negative. At no point of time, it was case of Ram Lal that he has become owner of said house on the basis of relinquishment deed by his sisters or on the basis of adverse possession. Ram Lal mentioned in said agreement that he is owner of entire house. It was for plaintiff-decreeholder to inquire whether defendant is absolute owner of said house or having share in same? When it was found that name of Kala Ram was existing in municipal records, it was for plaintiff to inquire whether Kala Ram left behind one legal heir or more than one legal heir. It appears that he did not make any such inquiry. This was risk for plaintiff, which he took.

I am of the view that both the Courts below have acted on supposition and acted on surmises and conjunctures to conclude that since Shanti Devi and Raj Rani did not claim any right or did not try to get their names entered in municipal record, therefore, they might have relinquished

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their right and there might have been family partition or there might be a Will. It is not case of either party that there was a relinquishment deed or Will in favour of Ram Lal. The succession will go by operation of law and if even names of Raj Rani and Shanti Devi were not incorporated in municipal records, they are deemed to have succeeded their father Kala Ram to the extent of 1/3rd share each. Merely withdrawal of suit by one of the objectors does not mean that objections are barred. When a title dispute is pending, proper forum in such case is to file objections in execution which is to be tried as a suit and separate suit is otherwise not maintainable. Therefore, mere withdrawal of suit by objector is no ground to hold that their mothers Raj Rani and Shanti Devi had no right in said house. It is pointed out that Ashok Kumar has got two sisters and Ram Lal has got three sisters. In any case, after death of Raj Rani and Shanti Devi, their legal heirs will succeed to shares of their mothers in equal shares.

The learned senior counsel for respondent No. 1 has vehemently argued that after suit was decreed, Ram Lal was creating hurdle by filing one or other objection. Firstly, his legal heirs filed objections, which were dismissed. Later on, they also filed a civil suit which was also dismissed and appeal was also dismissed and infact now Ram Lal has come through Ashok Kumar and Amar Lal.

I am of the view that merely because legal heirs of Ram Lal had availed one remedy, it does not debar Ashok Kumar and Amar Lal to claim their independent right.

It being so, it is held that Shanti Devi and Raj Rani had 1/3rd share each in disputed house. Judgment and decree dated 24.7.2001 can be executed against 1/3rd share of Ram Lal only. Decreeholder is always at

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liberty to seek civil action against Ram Lal for misrepresenting him that he is owner of entire house. It being so, present appeals are allowed. Judgment and decree dated 30.9.2014, passed by learned Civil Judge (Junior Division), Bhiwani, and judgment dated 6.12.2014, passed by learned Additional District Judge, Bhiwani, are set aside with the finding that decree dated 24.7.2001 is binding only qua 1/3rd share of Ram Lal in disputed house. Since main cases have been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

22.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No