

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

E.S.A.No.38 of 2018 (O&M)

Date of Decision: August 29, 2018

Manveer Singh & another

...Appellants

Versus

Nachattar Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate,
for the appellants.**

AMIT RAWAL, J.

The present Execution Second Appeal has been preferred against the judgment dated 16.12.2017, whereby third party objections filed by the appellants have been dismissed by the Civil Judge (Junior Division), Dabwali and judgment dated 14.5.2018, whereby the appeal preferred against thereto has also been dismissed.

The judgment and decree dated 1.11.2014 in Civil Suit No.1138 of 2013 for possession of the property in dispute was passed in favour of the decree-holder. Judgment debtor filed objections. It has been alleged that judgment debtor and decree holder are the son and father, whereas there are two other sons of judgment debtor, who have equal right in the suit property. Judgment debtor has been in possession of the suit property for more than 25 years. The grandsons of decree holder, namely, Manveer Singh and Rajveer Singh claimed that they are in possession of the property and the decree having been passed at their back cannot be executed

without affording any opportunity. No partition had taken place of the coparcenary property between the objectors and decree holder. The voter card and the ration card are of the same very house of which the possession has been sought. All the aforementioned facts were intentionally suppressed by the decree holder and the objectors were not impleaded in the aforementioned suit. The objectors have a birth right and pre-existing right in the property being coparceners. Warrants of possession have been issued and in case they are implemented, irreparable loss would be caused which cannot be compensated in terms of money.

Dr. Anmol Rattan Sidhu, learned Senior Counsel assisted by Mr. Raghav Gulati, Advocate representing the appellants submitted that the orders under challenge are not sustainable in the eyes of law on the premise that the courts below have not taken into consideration the fact that the appellants were not arrayed as defendants in the suit filed by the decree holder. The decree holder has not impleaded the appellants as party as they are the sons of judgment debtor and had been residing in the house. Decree for possession, thus, cannot be executed in their absence. The objections were to be treated as an independent suit as per the provisions of Order 21 Rule 102 CPC. The trial Court abdicated in not framing the issues which was duty bound. The voter card and ration card are in the name of the appellants. Even as per the provisions of Order 21 Rule 35 CPC, where a decree is for delivery of any immovable property, possession can be delivered to the party by removing any person bound by the decree who refused to vacate the property. The appellant-objectors are not bound by the decree, therefore, questions of law as carved out in the memorandum of appeal arise for adjudication.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions.

No doubt, the third party objections in case have a substance and are substantiated by some documents to establish the stand taken therein, certainly the court is required to frame the issues as per the provisions of Order 21 Rule 101 CPC, but in this case, as per averments, ibid, the judgment debtor and the objectors are residing in the same house. They were aware of the proceedings. Nothing prevented them to move an application for impleading party if at all they had some grievance. It cannot be said that the decree was passed at their back and without knowledge. Even judgment debtor had taken same plea regarding nature of the property as coparcener. The judgment and decree sought to be executed has attained finality. I am of the view that it was an act to delay the execution of the decree at the instance of the judgment debtor, who had projected his sons in forefront. All these facts have been considered in extenso by the courts below. The argument of Mr.Sidhu is not able to bring the case within the realm of perversity to form a different opinion. No substantial question of law arises for determination by this Court.

Resultantly, the appeal stands dismissed.

August 29, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No