

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

CR No. 4029 of 2018 (O&M)
Date of decision: December 18, 2019

Vikram Dutt

...Petitioner

Versus

Sarabjit Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sudeep Mahajan, Advocate,
for the petitioner.

Mr. B.M. Vinayak, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This revision has been filed seeking to challenge the order dated 24.05.2018 passed by the Executing Court by which warrants of possession have been issued against the present petitioner for taking possession of the property, while contending that the warrants of possession dated 24.05.2018 are the outcome of a completely sham, fraudulent and mala fide proceedings initiated before the trial court at the behest of one ex-tenant namely, Charanjit Singh.

2. This case has a chequered history and, therefore to understand the controversy, it would be necessary to highlight a few facts.

3. One Madan Lal Rambani had instituted an eviction application on 03.06.1999 against the tenant Charanjit Singh, inter-alia, on the ground

that the demised premises was required for his own personal necessity, stating that he had one son namely, Vikram Rambani, aged 28 years, who was likely to be married and as such the premises would be required for his use and occupation. The said eviction petition was contested by Charanjit Singh, admitting that he had taken premises in dispute on 05.01.1971. During the pendency of the said proceedings before the Rent Controller, Madan Lal and his wife passed away and on this background, the Rent Controller by an order dated 27.02.2006 dismissed the eviction petition on the ground that the requirement of the landlord had ceased to exist. The matter was then challenged before the Appellate Authority, who set aside the order of the Rent Controller, which order was then challenged before this Court in **Civil Revision 3465 of 2010 titled Charanjit Singh Versus Vikram Dutt and others**. This Court, after hearing both the counsel for the parties, dismissed the revision by order dated 26.04.2011 affirming the eviction order. Execution was filed seeking possession of the premises in dispute, to which a reply was filed by the Objector/tenant. The ex-tenant Charanjit Singh filed objections, in which he claimed that one Pardeep Kumar claiming himself to be the co-owner of the property had filed a separate ejectment petition titled "*Pardeep Kumar versus Charanjit Singh*" and had obtained an order of ejectment from the court of Ms. Sherryl Sohi, Rent Controller, Amritsar, and in those execution proceedings, he had handed over the vacant possession of the shop to said Pardeep Kumar. A reply was filed by the petitioner to the objection taken by Charanjit Singh stating that Pardeep Kumar was neither owner nor had any right, title or interest in the demised shop and this was nothing but a clever maneuver not

to hand over possession of the shop to the decree holder. The Executing Court dismissed the execution petition on the ground that the same has been rendered infructuous, as the possession has been handed over to some other person on the basis of a decree of the court of Ms. Sherryl Sohi, Rent Controller, Amritsar. This order was challenged before this Court by way of **Civil Revision No. 8067 of 2014 titled Madan Lal Rambani (since deceased) through his L.Rs Versus Charanjit Singh** on the ground that a devious method has been adopted by the respondents to deprive the petitioner of the fruits of the litigation in a petition that has been filed on 03.06.1999. Accordingly, the order of the Executing Court dismissing the matter as infructuous was set aside by this Court and a direction was issued to the Executing Court to implement the order of eviction as passed by the Appellate Authority on 13.04.2010 and subsequently upheld in Civil Revision No. 3465 of 2010. It is thereafter the petitioner herein was put in possession of the suit property.

4. However, it appears that the travails of the petitioner did not come to an end. The respondent herein, who is one Sarabjit Singh son of Kulwant Singh, apparently filed a suit for partition on the ground that he had purchased the said property by way of registered sale deed from one Pardeep Kumar son of Shambu Nath and on the basis of the said sale deed, had become owner of the said property to the extent of one half share. The Civil Judge (Junior Division), Amritsar, decreed the suit ex-parte and held the plaintiff entitled for partition of his share. On the basis of the preliminary decree, an application was filed for passing of a final decree.

Again an exparte final decree was passed, subsequent to which warrants of

possession were issued. The bailiff came to evict the petitioner herein.

5. It is pleaded case of the petitioner that he is owner of the suit property on the basis of a Will duly executed by his father. It is also submitted that he had been put in possession of the suit property through the order of the High Court wherein it was specifically observed that there is devious attempt made by the parties to thwart the order of the Appellate Authority as well as the High Court ordering ejectment of the tenant Charanjit Singh.

6. Mr. Sudeep Mahajan, learned counsel for the petitioner, contends that Pardeep Kumar, who had sold the property in favour of the said Sarabjit Singh is a person having no title, right and interest in the premises belonging to the petitioner herein. It is further brought to the notice of the court that a collusive decree had been filed between the said ex-tenant Charanjit Singh and Shri Pardeep Kumar, in which Charanjit Singh had handed over possession to Pardeep Kumar. Despite possession having been handed over to Pardeep Kumar, the High Court in Civil Revision No. 8067 of 2014 had directed the Executing Court to put the petitioner in possession.

7. Learned counsel also points out that Pardeep Kumar had filed an application under Order 1 Rule 10 of the Code of Civil Procedure seeking to be impleaded as a party in the eviction petition that was pending before the Appellate Authority on the ground that he was co-owner in the property in dispute on the basis of will dated 11.06.1986, being one of the legal heirs of the original owner Sh. Dhanpat Rai, his grandfather. This application was dismissed as for back as 04.12.2013 on the ground that the

alleged unregistered Will has not seen light of the day for more than 26 years nor had it ever been acted upon with respect to any of the property left by Shambu Nath or Dhanpat Rai. It is argued that the entire proceedings qua partition of the suit property on the basis of the sale deed were ex-parte as no proper notice was ever served upon the petitioner herein in the proceedings that had been initiated for partition of the property on the basis of the sale deed which is nothing but a sham and fabricated document. It is stated that Pardeep Kumar had no right, title or interest in the said property and he is not owner thereof. Learned counsel for the petitioner herein contends that the proceedings under Order 9 Rule 13 of the Code have already been commenced and are being contested. However, the petitioner, who under the order of the court had been put in possession, has been divested of his property by fraudulent means and he should be put back in possession of the suit property by way of restitution. Learned counsel for the petitioner vehemently stresses that any decree obtained by fraudulent means ought to be set aside and the High Court ought not to countenance to such an action. Reliance has been placed upon the judgments rendered in **Hamza Haji Versus State of Kerala and another 2006 (4) CivCC 407, North Eastern Railway Administration, Gorakhpur Versus Bhagwan Das (D) by Lrs 2008 (3) CivCC 226, Union of India & Ors Versus Ramesh Gandhi 2012 (1) SCC 476, Chandigarh Primary Co-operative Land Mortgage Bank Ltd. Versus State of Punjab and others 2005 (2) CivCC 470 and Ram Chandra Singh Versus Savitri Devi & others 2003 (8) SCC 319**, in support of his arguments that fraud ought not to be perpetrated.

8. Per contra, Mr B. M. Vinayak, learned counsel for the respondents herein, contends that the genesis of the dispute pertains to the property that originally belonged to one Dhanpat Rai son of Shri Sahib Dayal, who died intestate, leaving behind two legal representatives, namely Baij Nath and Shambu Nath. It is argued that Shambu Nath father of Shri Pardeep Kumar died on 11.05.1987 and had left a will in his favour dated 11.06.1986 qua his share in property of Sh. Dhanpat Rai. It is argued that Baij Nath and Shri Madan Lal had entered into a collusive decree regarding the entire property of Dhanpat Rai without impleading either Shambu Nath or his legal heir and, therefore the property in fact belonged not only to Madan Lal son of Baij Nath but Pardeep Kumar as well. It is argued that in fact Shri Sarabjit Singh is a bona fide purchaser of the property and had already challenged the collusive decree dated 15.01.1988 between Baij Nath and Shri Madan Lal and the same is pending consideration before the court. Learned counsel would also argue that the petitioner with a malafide intention had withheld all valid documents from the court insofar as it is not disclosed in the collusive civil suit that Shri Shambu Nath father of Shri Pardeep Kumar had one half share in the property of his father Sh. Dhanpat Rai. Said Shri Shambu Nath had executed a legal and valid Will dated 11.06.1986 in respect of his one half share in the property which he had acquired after the death of their father Sh. Dhanpat Rai and Baij Nath could not have entered into the collusive decree with Madan Lal regarding the entire estate of the Dhanpat Rai. It is also submitted that the instant petition has been rendered infructuous since the plea therein for stay of proceedings of stay of issuance of warrants of possession in the suit that had been

decreed qua partition, while also arguing that as on date there is a valid sale deed in his favour which has not been challenged as on date and he is bonafide purchaser. Reliance in support of his arguments has been placed on the judgment rendered in **Gajjan Singh Versus Virssra Singh and others 2007 (3) R.C.R. (Civil) 3.**

9. I have heard learned counsel for the parties and with the assistance have gone through the pleadings.

10. There is no dispute about the fact that the father of the petitioner herein had initially filed a suit for eviction against one Charanjit Singh which eviction proceedings were hotly contested right up to the High Court and ultimately the order of the Appellate Authority was affirmed by this Court whereby the eviction of Charanjit Singh was ordered. Record would also bear out that the petitioner herein on the basis of the will executed by Madan Lal in his favour sought possession through execution proceedings, where the said Charanjit Singh filed his objection stating that he had in fact handed over possession to one Pardeep Kumar, who in an independent eviction proceedings had sought eviction of Charanjit Singh claiming himself to be one of the co-owners of the said property. It is also not in dispute that the execution as filed by the petitioner was dismissed as infructuous since possession had already been handed over to Pardeep Kumar. However, this Court in Civil Revision No. 8067 of 2014 had set aside the order of the Executing Court rendering execution proceedings as infructuous by directing the Executing Court to put the petitioner herein in possession. It is also not in dispute that the application filed by the Pardeep Kumar under Order 1 Rule 10 of the Code of Civil Procedure seeking to be

impleaded as a party in the eviction proceeding stood dismissed, which order had attained finality. The said Pardeep Kumar has sought to rely on unregistered will dated 11.06.1986 which was not relied upon by the Appellate Authority while dismissing the application on the ground that the same had not seen light of the day for the last 26 years. The order dismissing the application is dated 4th of December 2013 and apparently thereafter said Pardeep Kumar claiming himself to be the owner to the extent of one half share sold it to the respondent herein for a valuable consideration of ₹18,22,000/- by registered sale deed dated 03.06.2014 which eventually led to the filing of a suit for partition on 14.11.2014 which was decreed ex-parte leading to a decree being passed and warrant of possession being issued. Even though the application under Order 9 Rule 13 of the Code of Civil Procedure has been filed, a question that would remain to be answered is, whether this court in exercise of its inherent powers could order restitution of the possession to the petitioner herein in the disputed premises or should allow the proceedings under Order 9 Rule 13 of the Code to culminate.

11. Learned counsel for the petitioner has laid great stress on the argument that fraud vitiates all. It is argued that there is active connivance between Pardeep Kumar and the respondents herein in executing a fraudulent sale deed, particularly when Pardeep Kumar did not have any authority to execute the same, as he was not an owner thereof. It is argued that the judgment and decree obtained by fraud is a nullity and nonest in the eyes of law and, therefore, this Court ought to interfere and put the petitioner back in possession of the property giving him opportunity to defend his case on merit, whereas, learned counsel appearing on behalf of

the respondents vehemently submitted that Madan Lal and Baij Nath had obtained a collusive decree at the very first instance without impleading Shambu Nath or his legal heirs, who was owner of one half share of the property and, therefore, Madan Lal could not be held to be exclusive owner of the property in dispute and that being a bonafide purchase respondent had rightly been put in possession after proceedings in the suit for partition had been culminated.

12. Prima facie, this Court is of the opinion that Pardeep Kumar who had sought to be impleaded as a party in eviction proceedings was not able to establish his ownership on the basis of a Will set up by him in an application that had been filed under Order 1 Rule 10 of the Code. This Court too had observed that there was a devious attempt being made to deprive the petitioner herein of the fruits of his litigation. What is interesting to note is that Pardeep Kumar who had sold the property to the respondent—Sarabjit Singh did not choose to contest the alleged collusive decree between Baij Nath and Madan Lal by virtue of which Madan Lal had become the sole owner of the property in dispute, which he in turn bequeathed in favour of the petitioner herein. There is nothing brought on the record by the respondents herein to show the ownership of Pardeep Kumar over the property and, therefore, the question whether the sale deed can stand scrutiny is the question that has to be decided.

13. No doubt, the law has been settled in **Meera Chauhan Versus Harsh Bishnoi and another 2007 (1) R.C.R. (Civil) 597**, which lays down the principle that the High Court under inherent power can set aside a wrong that is done and not to allow perpetuation of the same, but should the

discretion be exercised in the instant case when an application under Order 9 Rule 13 of the Code is already pending consideration? There is no quarrel with the proposition that decree obtained fraudulently is nonest in the eyes of law, as argued by the learned counsel for the petitioner.

14. The Court is satisfied that an extreme hardship has been caused to the petitioner herein who after litigating for several years was put in possession of the property only to be dispossessed from the same when the property had been sold out from under him and that too purported by a person who does not feature as owner. Inherent powers of the High Court under Article 227 of the Constitution of India is wide enough to over come a patently illegal action and to protect the interest of a party who is suffering for no fault of his. However, this Court is not competent to give any finding about the sale deed or the genuineness of the same. The question of fraud has to be decided by the Court of competent jurisdiction and that too after evidence. Opportunity has to be given to plead that the respondent is a bonafide purchaser.

15. In the instant case, despite the fact that the petitioner had been put in possession on the basis of an order passed by the Executing Court, this Court cannot loose sight of the fact that there is a sale deed in favour of the respondents herein registered as far back as 2014 and through the process of the court had sought partition and was put in possession of the same. Whether ex-parte proceedings were bonafide or fraud has been played upon the petitioner, is a matter of evidence and proceedings have already been initiated by the petitioner under Order 9 Rule 13 of the Code of Civil

Procedure to set aside the ex-parte decree. In this background, this Court is

loathe to interfere in the order sought to be set aside, considering the fact that possession had already been taken. At best this Court can direct the trial court, seized of the matter, to expedite the hearing on the application under Order 9 Rule 13 of the Code of Civil Procedure by limiting the number of opportunities to the parties to adduce their evidence.

16. Consequently, while dismissing the revision, the trial court is directed to decide the application filed under Order 9 Rule 13 of the Code of Civil Procedure within a period of two months on receipt of a certified copy of this order, by allowing two effective opportunities to the petitioner, in case his evidence has not been completed and two effective opportunities to the respondents herein and thereafter take a conscious decision thereon, in accordance with law. Needless to mention that in case, the petitioner is successful in getting the ex-parte decree passed against him set aside, then he is at liberty to move an appropriate application for consideration of restoration of the property pending the decision in the civil suit.

17. However, it is made clear that any observation made hereinabove would have no effect on the merit of the case pending before the trial court.

December 18, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No