

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7811 of 2010 (O&M)
Date of Order: 26.02.2019

Food Corporation of India

..Petitioner

Versus

Daulat Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.K.Gupta, Advocate,
for the petitioner.

Mr. A.S.Bhatti, Advocate
for respondents no.2 and 3.

ANIL KSHETARPAL, J(Oral)

Decree Holder is in the revision petition against the order passed by the learned Executing Court dated 26.08.2009.

There is a decree in favour of the petitioner for recovery of the amount. Judgment Debtor-Daulat Ram is said to have given an affidavit at the time when the contract was awarded in his favour proclaiming that the property in the hands of his father is ancestral property. Decree-holder i.e. Food Corporation of India believed that affidavit and accepted the affidavit in order to show financial soundness. However, judgment debtors-Daulat Ram did not perform as expected and, therefore, the decree holder filed a suit for recovery of the amount which was decreed on 04.09.1990. It is in execution of the aforesaid decree the impugned order was passed by the Executing Court. Objectors i.e. sons of Daulat Ram, Judgment debtors claim that the property in question was never owned by their father Daulat

Ram and it was bequeathed by their grand father in favour of grand sons i.e. themselves.

Learned Executing Court has held that the decree-holder has failed to produce cogent evidence to prove that the property was ancestral in the hands of Hari Ram and therefore it could not be bequeathed by way of testament, thus the objections were allowed.

Learned counsel for the petitioner submitted that Mohan Lal, Patwari has appeared in evidence, who has stated that the property was inherited by Hari Ram from his father. Hence, he submitted that the property is proved to be ancestral in nature.

On the other hand, learned counsel for the respondents has pointed out that Hari Ram had purchased the property vide registered sale deeds dated 09.10.1958, 07.03.1969 and 27.08.1969 and, therefore, the property is not ancestral in nature.

For proving that the property is ancestral, in the High Court Rules and Orders, a provision has been made to get an excerpt prepared from the special Kanungo. Reference in this regard can be made to High Court Rules and Orders, Volume 1, Chapter 9 (hereinafter referred to as 'the Rules'). As per the Rules, the special Kanungo, who prepared the excerpt has to appear in the Court along with the original record from where the excerpt was prepared and thereafter prove ancestral nature of the property. In the present case, learned Executing Court has rightly held that what was the basis of the report of the Tehsildar is not proved.

In view thereof, there is no error in the order passed qua the finding that the property is not proved to be ancestral. However, learned counsel for the petitioner has pointed out that the learned Executing Court

has committed an error in consigning the file to the record room i.e. the execution petition. In response thereto, learned counsel for the respondents could not put forth any plausible explanation.

Keeping in view the aforesaid facts, the order under challenge is set aside only to the extent that the execution petition shall not stands disposed of and the decree-holder shall be entitled to proceed against the judgment-debtors in accordance with law.

The revision petition stands disposed of.

February 26, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No