

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8451 of 2014 (O&M)

Date of Decision: January 29, 2019

Usha & another

...Petitioners

Versus

Paramjit Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Mohit Jaggi, Advocate,
for the petitioners.

AMIT RAWAL, J.

The present civil revision petition is directed against the impugned order dated 18.11.2014 (Annexure P-9) at the instance of the third party objectors Usha and Sukhbir seeking recalling of the order dated 03.12.2011 (Annexure P-6), whereby their objections were dismissed on the ground that they were bonafide purchasers of land for valuable consideration vide registered sale deed dated 26.03.2009.

Mr. Mohit Jaggi, learned counsel for the petitioners submitted that Mohinder Singh had two sons, namely, Bhupinder Singh and Gurpreet Singh from his first wife. He married second time with Paramjit Kaur and was blessed with two sons, namely, Amarjit Singh and Prabhjot Singh. Paramjit Kaur instituted a petition for maintenance for self and children under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 and for declaration that the maintenance be created a charge on the following property of the defendant:-

“(a) Kothi/House No.1033, St.No.10, Guru Nanak Nagar, OPP Gurbaksh Colony, Patiala.

(b) One shop situated near Gurdwara Dukh Niwaran Patiala and one plot in Mohalla Tripadi Township, Patiala.

(c) Salary of the defendant to the extent of Rs.5000/- per month which he is drawing from PWD B&R near General Post Office, Patiala.”

Vide decree dated 21.08.2006, she was held entitled to maintenance of ₹ 2000/- from Mohinder Singh as arrears of maintenance from the date of institution of the suit till the life time of the plaintiff No.1 and two sons were entitled to ₹ 1500/- per month each till they attained the majority. In the meantime, charge on the property alleged to have been created.

As regards the relief of injunction, the defendant was permitted to alienate half share from his property by way of sale, mortgage, gift etc. Appeal was filed. While dismissing the appeal, the order was modified to the extent that maintenance amount will be charge on the property of the defendant and there was no decree for injunction restraining the defendant from alienating the property in any manner.

On the demise of Mohinder Singh, mutation had been sanctioned in favour of the first wife on 12.05.2009 on the basis of the Will. Paramjit Kaur, second wife, filed the suit by challenging the mutation which was dismissed in default vide order dated 09.10.2013. She is already drawing the pension of ₹ 7614/- as per the certificate issued by the office of the Accountant General (A&E), Punjab, but in execution of the judgment and decree dated 24.07.2008 modified by the Lower Appellate Court, the property purchased by the petitioners from the sons of first wife vide sale deed dated 26.03.2009 could not have been attached as there was no bar for

Mohinder Singh to alienate the land. The order under challenge, thus, is not sustainable as Bhupinder Singh and Gurpreet Singh had already been divested of their right by virtue of the sale deed, *ibid*. The hearing of the objection petition was kept pending at Ludhiana. Since the property involved in the present execution was situated in Patiala, but the counsel for the petitioners requested the court at Ludhiana to send the execution petition to the Court at Patiala by making precept in the case. The Court at Ludhiana ought not to have decided the objections and should have transferred the case to the Court at Patiala. The decree holder tried to play fraud with the Court by filing a suit for declaration and permanent injunction without impleading the petitioners as party to the suit, which was dismissed in default. The objections should not have been dismissed in a summarily manner as issues were required to be framed in view of the provisions of Order 21 Rule 100 and 102 of CPC.

There is no representation on behalf of the respondent despite service as noticed by this Court. Accordingly, I proceed to decide the revision petition on merits.

This Court, while issuing notice of motion on 11.12.2014, passed the following orders:-

“Submits that the petitioners are purchasers of the house vide sale deed dated 26.03.2009 (Annexure P3) from Bhupinder Singh and Gurpreet Singh, sons of Mohinder Singh (since expired). Respondent-Paramjit Kaur along with her sons who were minor, at that point of time, had got a decree of maintenance dated 21.08.2006 (Annexure P1) for ₹2,000/- for herself and ₹1,500/- each for the minors, till they reached the age of majority, which was modified on 24.07.2008 (Annexure P2). It is submitted that there was no such mention of attachment in the revenue record (Annexure P4).

On account of the attachment in execution, petitioners filed objections which were dismissed, firstly on 03.12.2011 (Annexure P6) and thereafter, review application was filed, which has now been dismissed on 18.11.2014 by the Executing Court.

It is submitted that Amarjit Singh and Prabhjot Singh, sons of Mohinder Singh, have become major, as per their own case, since they had filed the suit for declaration, which has been dismissed in default on 09.10.2013 (Annexure P11). That Paramjit Kaur is now a beneficiary of the retiral benefits of deceased-Mohinder Singh and getting pension of ₹7614/- (Annexure P10). It is, accordingly, submitted that in such circumstances, the petitioners being bona fide purchasers, were entitled for the benefit of their objections which has wrongly been dismissed.

Notice of motion for 11.05.2015.

Further proceedings before the Executing Court are stayed, in the meantime”

It would be apt to reproduce the operative part of the judgment of the Lower Appellate Court dated 24.07.2008. The same reads thus:-

“It is hereby ordered that the appeal of the appellant is dismissed with the modification that maintenance amount will be charge on the property of the defendant. There shall be no decree of permanent injunction restraining the defendant from alienating the property in any manner. Parties are directed to bear their own costs.”

The sale deed in favour of the petitioners is dated 26.03.2009 (Annexure P-3). It is also not in dispute that Paramjit Kaur has already been taken care of in view of the certificate of the Accountant General (Annexure P-10). The mutation of inheritance had attained finality in view of the suit filed by Paramjit Kaur and her sons as the same has been dismissed in default vide order dated 09.10.2013. The memo of parties and the order are

reproduced as under:-

“Memo of parties in Civil Suit No.667 of 21.07.2009

- 1. Paramjeet Kaur aged about 44 years w/d of Sh. Mohinder Singh.*
- 2. Amardeep Singh aged about 22 years.*
- 3. Prabh Jot Singh aged about 20 years, both sons of late Sh.Mohinder Singh, all residents of H.No.349, Street No.2, Guru Arjan Dev Nagar, Samrala Chowk, Ludhiana.*

...Plaintiffs

Versus

- 1. Bhupinder Singh son of Sh.Mohinder Singh,*
 - 2. Gurpreet Singh son of Sh.Mohinder Singh,*
- Residents of H.No.1033, Street No.10, Guru Nanak Nagar, Opposite Gurbux Colony, Patiala.*

Defendant

Order dated 9.10.2013

“Present: None for the plaintiff.

Shri Sandeep Dhawan, Adv.for defendants No.3 and 4.

Case called several times but none has appeared on behalf of the plaintiff on two consecutive dates of hearing i.e. 19.9.2013 ad 9.10.2013. The plaintiff did not provide the correct address of defendants No.1 and 2 despite availing numerous opportunities for the same. The case is pending consideration since 1.7.2009. It appears that the plaintiff is not serious in pursuing with the present case. There is no ground to give any further opportunity to the plaintiff to appear as it amounts to an abuse of process of Courts. The suit is dismissed in default. File be consigned to the Record Room.”

Once there was no impediment or hindrance, much less attachment or sale on the property, the land purchased by the petitioners should not have been attached in execution of the decree. The trial Court did not even notice the aforementioned fact, much less the question of pension.

The Court should not have ordered for attachment of the property as it was free from encumbrances.

In view of what has been observed above, the orders under challenge suffer from illegality and perversity. The same are set-aside. Revision petition stands allowed.

It is made clear that this order shall not prevent the trial Court in proceeding with the other property of Mohinder Singh after noticing withdrawal of pension by Paramjit Kaur widow of Mohinder Singh.

January 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No