

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

CR No.1412 of 2019

Date of Decision : 24.09.2019

The Improvement Trust, Ludhiana

....Petitioner

v/s

Nasib Singh (deceased) through LRs and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr.R.K.S. Brar, Advocate for the petitioner.

B.S. Walia, J.,

[1] Prayer in the petition under Article 227 of the Constitution of India is for setting aside Order, Annexure P/1, dated 08.11.2012, passed by the learned Civil Judge (Senior Division), Ludhiana, dismissing the application filed by the petitioner/JD No.2 dated 05.11.2012 for declaring null and void the auction held on 14.09.1992, for setting aside the same, as also order confirming the sale, besides sale certificates executed through Court Auction on 16.09.1993 in favour of the auction purchasers on account of the same being the result of fraud and misrepresentation committed by the decree holder in connivance with the auction purchasers with the Court, as well as the judgment debtor. Prayer is also for setting aside Order, Annexure P/2, dated 01.07.2017, passed by the learned Additional District Judge, Ludhiana dismissing MCA No.26 of 2013.

[2] The learned Civil Judge (Senior Division), Ludhiana vide Order, Annexure P/1, dated 08.11.2012 dismissed the objections with costs of Rs.2,000/- as the petitioner had filed similar objections before the trial Court under Order 21 Rule 89 and Rule 90 CPC, which were dismissed by the Executing Court on 03.05.1993 and dismissal of the objections upheld upto the Supreme Court vide order dated 07.01.2009. Subsequently, revision petition

was also dismissed on 20.11.2009 and in the circumstances, it was clear that the objections by the petitioner had become barred by the principles of *res judicata* / constructive *res judicata*.

[3] Aggrieved, the petitioner filed an appeal against Order, Annexure P/1, dated 08.11.2012. However, the learned Additional District Judge, Ludhiana, upheld the order passed by the learned Civil Judge, Ludhiana.

[4] Sole argument raised by learned Counsel before this Court as recorded in order dated 26.02.2019 is that the purchase of the property in the auction by the sons and daughter in laws of the decree holder was in fact for the benefit of the decree holder as funds for the purchase of the property in execution of the decree were furnished by the decree holder. However, on July 15, 2019, learned counsel conceded that there was no evidence to show that the purchase of the property in the auction by the sons and daughters in law of the decree holder was in fact for the benefit of the decree holder or that funds for the purchase of the property in execution of the decree were furnished by the decree holder. However, having so conceded, learned counsel sought and was granted time to refer to case law that on the sons and daughter in laws of the decree holder stepping into the shoes of the decree holder as his LRs, the bar under Order 21 Rule 72 would apply.

[5] As far as the argument raised by learned Counsel on 26.02.2019 that purchase of the property in the auction by the sons and daughter in laws of the decree holder was for the benefit of the decree holder and that funds for the purchase of the property in execution of the decree were furnished by the decree holder, it needs noticing that learned counsel, on July 15, 2019 conceded that there was no evidence to show that the purchase of the property in the auction by the sons and daughters in law of the decree holder was for the benefit of the

decree were furnished by the decree holder. Today also no material in support of the argument raised on 26.02.2019 has been addressed. Accordingly, the said argument is rejected. As regards the second argument i.e. that on the sons and daughter in laws of the decree holder stepping into the shoes of the decree holder as his LRs, the bar under Order 21 Rule 72 would apply, neither has any elaboration been advanced nor has any case law been referred. Even otherwise, the property was purchased by the auction purchasers i.e. the sons and daughters in law of the decree holder in their own individual capacity without there being any evidence that the purchase of the property in the auction by the sons and daughters in law of the decree holder was in fact for the benefit of the decree holder or that funds for the purchase of the property in execution of the decree were furnished by the decree holder. Mere fact that the auction purchasers subsequently stepped into the shoes of the deceased decree holder as his LR's would not in any way advance the case of the petitioner of applicability of the bar under Order 21 Rule 72. No other point has been argued. Even otherwise, the auction was conducted on 14.09.1992, whereas objections were filed on 05.11.2012. Learned counsel has failed to substantiate that the findings recorded by the Courts below are contrary to the record or suffer from any infirmity. Accordingly, no ground is made out warranting interference with the well reasoned order passed by the learned Civil Judge (Senior Division), Ludhiana as upheld by the learned Appellate Court i.e. the learned Additional District Judge, Ludhiana. The petition is bereft of merit and is accordingly dismissed *in limine*.

September 24, 2019

**(B.S. Walia)
Judge**

'Rajneesh'

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