

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

CR No.1318 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 13.03.2013, passed by the learned Civil Judge (Senior Division), Ludhiana dismissing the application under Order XXI Rule 72(3) read with Section 151 CPC, as well as Order, Annexure P/2 dated 01.07.2017, passed by the learned Additional District Judge, Ludhiana in MCA No.41 of 2013, dismissing the appeal filed by the petitioner-JD against order, Annexure P/1 dated 13.03.2013.

[2] Brief facts of the case, leading to the filing of the revision petition are that the petitioner filed an application under Order XXI Rule 72(3) read with Section 151 CPC for setting aside auction held on 14.09.1992 as well as purchase made by the sons and daughter in laws of the decree-holder, Nasib Singh in execution proceedings instituted by the respondent/decreed-holder.

[3] Perusal of the impugned order reveals that on execution proceedings being filed by respondent-Nasib Singh, property of the petitioner-JD which was attached on 09.12.1991 was openly auctioned on 14.09.1992 and was purchased by respondent Nos.2 to 5 i.e. sons and daughters-in-laws of deceased Nasib Singh.

[4] Objections filed under Order XXI Rule 72(3) read with Section 151 CPC by the petitioner-JD were dismissed by the learned Civil Judge (Senior Division), Ludhiana vide Order, Annexure P/1, dated 13.03.2013.

[5] Sole argument raised by learned counsel for the petitioner-JD before the learned Additional District Judge, Ludhiana was that the auction purchasers i.e. respondent Nos.2 to 5 being related to the decree-holder, it was incumbent upon the decree holder to have obtained the permission of the Court to purchase the property and on account of failure to do the same, the auction was liable to be set aside. Same argument has been reiterated before this Court.

[6] I have considered the submission of learned counsel. Order XXI Rule 72 of the CPC reads as under :-

- “(1) *Provides “No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.”*
- (2) *Provides “where, a decree-holder purchases with such permission the purchase money and the amount due on the decree may be set off.”*
- (3) *Provides “where the decree-holder purchases by himself or through another, without such permission, the court may set aside the sale and direct the costs of the application and any deficiency of price which may happen on the resale and all expenses to be paid by the decree-holder.”*

[7] Admittedly, the auction purchasers are the sons and daughters-in-laws of the decree-holder. However, learned counsel for the petitioner has not referred to any evidence to show that respondent Nos.2 to 5 i.e. auction purchasers purchased the property in dispute for the benefit of the decree-holder or on his behest. It needs noticing here that on 26.02.2019, learned counsel for the petitioner had sought time to refer to evidence to show that the

purchase of the property in the auction by the sons and daughters-in-laws of the decree-holder was in fact 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. Thereafter, on July 15, 2019, learned counsel for the petitioner conceded that there was no evidence to show that the purchase of the property in the auction by the sons and daughters-in-laws 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 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.

[8] Once it is conceded that there is no evidence to show that the purchase of the property in the auction by the sons and daughters-in-laws 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, no presumption can be drawn that the sons and daughters-in-laws of the decree-holder purchased the property in question for the benefit of the decree-holder solely on the basis of relationship. In '**M/s Bajwa and Company Rice Mills** versus **M/s Keshaw Rai Naresh Pal Singh**', 1989(2) PLR 522, it was held as under :-

“It has been held by Hon’ble Punjab and Haryana High Court that “where in an Auction sale of property decree in favour of firm, Auction purchaser was father of one of the partners of the firm and there was no allegation that land was purchased by auction purchaser on behalf of decree-holder, it was a valid auction.”

[9] As regards the submission that on the sons and daughter in laws of the decree holder stepping into the shoes of the decree holder as his LR's, the bar under Order 21 Rule 72 would apply, neither any argument has been advanced nor has any case law been referred. Even otherwise, the property was purchased by respondent Nos. 2 to 5 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 respondent Nos. 2 to 5 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 evidence has been pointed out that the decree holder had given bid through his children without the permission of the Court, nor was said issue raised for trial. No other point has been argued.

[10] In view of the petitioner having failed to refer to any evidence whatsoever to show that the property in question had been purchased by the auction purchasers in the open auction on behalf of the decree-holder or through funds furnished by him, the objections were rightly dismissed. The impugned order's do not warrant any interference. Accordingly, finding no merit in the revision petition, the same is ***dismissed in limine***.

(B.S. Walia)
Judge

September 24, 2019

'Rajneesh'

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No