

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1601 of 2019(O&M)
Date of Decision:6.5.2019

Ram Sarup

---Appellant

vs.

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Arun Jain, Senior Advocate with
Mr. Manvir Rana, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 22.2.2019 passed by the Additional District Judge, Kurukshetra whereby appeal preferred by the State of Haryana through Collector, Kurukshetra against judgment and decree dated 29.8.2014 passed by the Civil Judge (Junior Division), Kurukshetra (hereinafter referred to as “the trial court”) was accepted, judgment and decree dated 29.8.2014 were set aside and suit filed by the appellant-plaintiff for declaration and permanent injunction as consequential relief, was dismissed with costs.

The facts relevant for disposal of present appeal are that the appellant has staked claim to suit land being successor in interest along with defendants No. 2 to 17 of Smt. Gomi. The case set up by the appellant is that Tula son of Nanak was owner in possession of land measuring 37

kanal 7 marlas inherited by him, vide mutation No. 64 dated 19.2.1963 from his father as well as Laxman son of Mokh Ram who was unmarried and died issueless in the year 1961. Tula died on 11.3.1975 and suit land was inherited by Smt. Gomi, daughter of said Tula. Smt. Gomi was earlier married with Datu Ram and after death of Datu Ram, she performed kareva marriage with Parhlada son of Chhotu, who was younger brother of Datu Ram. From wedlock of Datu Ram and Smt. Gomi, Chatar Singh and Mohan Lal were born. From wedlock of Parhlada and Smt. Gomi, plaintiff, defendants No. 12, 14 to 17 and Sunehari were born. Smt. Gomi died on 2.2.1978 leaving behind plaintiff and defendants No. 2 to 17 and all the legal heirs inherited the suit land and other estate left behind by Smt. Gomi. The mutation of suit land could not be entered in favour of Smt. Gomi or her successors in interest due to the reason that Smt. Gomi was illiterate and simpleton lady. It is further averred that the appellant and defendants No. 2 to 17 are in constructive possession of suit land through Jai Singh son of Churia as a tenant. The appellant enquired from halqa partari about the suit land and came to know that mutation No. 237 was entered in favour of respondent No. 1 on 10.11.1999 by way of escheat. The said mutation was entered without adopting due procedure as no enquiry was done from legal heirs of Tula nor any publication was effected. On further enquiry, appellant came to know that a forged decree dated 10.10.1986 was procured by Multan Singh who got mutation No. 103 and 124 in his favour but later the said decree and mutations were set aside in the litigation.

Ram Chander-defendant No. 12 filed objections in execution petition No. 163 of 1998, decided vide order dated 18.7.2007. He also filed

civil suit No. 255/05 of 2000 decided on 9.8.2007 in which further appeals were filed by Ram Chander. Ram Chander did not implead the plaintiff and other legal heirs of Smt. Gomi in the earlier litigation. The appellant prayed that plaintiff and defendants No. 2 to 17 be declared owners in possession of suit land by setting aside mutation No. 237 sanctioned on the basis of decree dated 1.3.1996.

The trial court decreed the suit vide judgment and decree dated 29.8.2014 to the following effect:-

“It is ordered that the suit of the plaintiff succeeds and the same is hereby decreed with costs to the effect that plaintiff and defendants No. 2 to 11 and defendant No. 13 to 17 are owners in possession of the suit land and mutation of escheat of 10.11.1999 on the basis of decree stands null and void and not binding on the rights of the plaintiff and defendants No. 2 to 11 and defendant No. 13 to 17. Defendant No. 1 is permanently restrained from taking forcible possession of suit land in any manner. Defendant No. 12 is excluded due to bar of res judicata for claiming any right in this property.”

As has been noticed hereinbefore, the appellate court reversed the judgment and decree passed by the trial court and dismissed suit of the appellant-plaintiff.

Counsel for the appellant would argue that the plaintiff-appellant was neither a party to the objections filed in the execution petition No. 163 of 1998 titled “State of Haryana vs. Multan Singh etc.” by Ram

Chander decided vide order dated 18.7.2007 nor in the suit filed by Ram Chander which was dismissed. It is further argued that objections under Order 21 Rules 99 to 101 of the Code of Civil Procedure (in short “the Code”) filed by the present appellant in the aforesaid execution petition were dismissed by Civil Judge (Senior Division), Kurukshetra on the ground of non-maintainability, therefore, neither decision in the objections preferred by Ram Chander nor civil suit filed by him or in the objections filed by the appellant would constitute res judicata or bar the suit on the ground of non-maintainability. It is further argued that since the State of Haryana did not follow proper procedure and conduct due enquiry before escheating the land in question previously owned by Sh. Tula, the State cannot be permitted to grab the land to which legal heirs of Smt. Gomi daughter of Tula are entitle on the basis of natural succession. It is argued with vehemence that the first appellate court committed a serious error rather perversity by setting aside the well reasoned judgment passed by the trial court.

I have heard counsel for the appellant and perused the records.

Before advertng to the submissions made by counsel, it is necessary to recapitulate the chequered history of this case as litigation pertaining to suit land started way back in the year 1986. One Multan Singh and Dalel Singh got decree dated 10.10.1986 from the civil court on the basis whereof mutation No. 103 and 124 were entered and sanctioned. The State of Haryana challenged the judgment and decree dated 10.10.1986 by way of civil suit No. 650 of 1988. The suit filed by State of Haryana was decreed on 1.3.1996 and decree dated 10.10.1986 in favour of Multan Singh

and Dalel Singh was set aside and it was held that Tula had not executed any Will and he was not survived by any legal heir. Multan Singh etc. preferred the appeal before the District Judge, Kurukshetra but the same was dismissed vide judgment and decree dated 10.1.1998. They remained unsuccessful throughout upto Hon'ble the Supreme Court as Special Leave Petition to Appeal was dismissed. Subsequent thereto, mutation No. 237 dated 10.11.1999 was sanctioned in favour of State of Haryana and suit land devolved upon the State on the basis of escheat.

The State of Haryana filed execution petition titled "State of Haryana vs. Multan Singh etc.". In the said execution petition, Ram Chander, real brother of the appellant filed third party objections in the year 2000 claiming himself to be legal heir of Tula through Smt. Gomi being his mother and the same were dismissed on 18.7.2007. Ram Chander filed CMA No. 81 of 2007 to challenge order dated 18.7.2007 and the appeal was dismissed by the Additional District Judge, Kurukshetra vide order dated 7.12.2007. Still not feeling satisfied, Ram Chander filed Civil Revision No. 604 of 2008 before the High Court of Punjab and Haryana and the same was also dismissed, vide order dated 25.3.2009.

Ram Chander filed civil suit No. 255/05 and the same was dismissed vide decree dated 9.8.2007 and the same attained finality. Still later, the present appellant filed objections dated 21.10.2009 in the aforesaid execution petition, dismissed by the Civil Judge (Senior Division), Kurukshetra vide order dated 10.12.2009 Ex. P5. The operative part of the order reads as follows:-

"Further, this court wants to mention here that the present

objections have been filed by objector Ram Sarup who is real brother of objector Ram Chander and this fact is clearly mentioned by the objector Ram Sarup in para No. 2 of his objection by showing the pedigree table, wherein they both are shown as brothers. When the court has already held that objector Ram Chander has no relation with the deceased Tula Ram, then, this court is of the opinion that there is no necessity to frame issues in the present execution again to prove this fact that objector Ram Sarup is legal heir of deceased Tula Ram. So, objector Ram Sarup is estopped to file the present objections, rather, it goes to show this fact that by filing the same, he wants to prolong the proceedings of this case which is a sheer abuse of process of law as it is established up to Hon'ble High Court that the Ram Chander who is real brother of objector Ram Sarup has no relationship with deceased Tula Ram.

So, in view of my aforesaid discussion, this court is of the opinion that by filing the present objections, objector Ram Sarup wants to prolong the matter. As such, there is no need to frame issues in the present execution to prove this fact as to whether objector Ram Sarup has any relationship with deceased Tula Ram or not. As such, present objections filed by the objector Ram Sarup are uncalled for, unsustainable and same is not maintainable and accordingly the same merits dismissal and is hereby dismissed.”

Before filing the objection petition, the appellant-plaintiff filed the instant suit in August 2009.

There is no dispute that in the litigation initiated by the State of Haryana against Multan Singh etc., a decree for possession in respect of the suit land was passed and State of Haryana remained successful in the said litigation upto Hon'ble the Supreme Court. Eventually, State of Haryana filed execution petition No. 163 of 1998 seeking execution of the decree passed in the suit titled "State of Haryana vs. Multan Singh etc". Ram Chander, brother of the plaintiff-appellant filed objections claiming right in the suit land on the basis of inheritance to Smt. Gomi, stated to be mother of said Ram Chander. Ram Chander failed in his endeavour to get any relief either from the executing court in view of the objection petition preferred by him or in the civil suit filed by him. The orders/judgments passed in the objection petition as well as civil suit of Ram Chander have attained finality. When Ram Chander failed to get any relief claiming right in the suit property on the basis of natural succession to Smt. Gomi, the present appellant swung into action and filed the instant suit in August 2009 and two months later filed the application/objections under Order 21 Rules 99 to 101 of the Code in the pending execution proceedings. All these facts lead to an irresistible conclusion that the present suit as well as objections preferred by the appellant are nothing but abuse and misuse of process of law and is the result of well thought conspiracy between Ram Chander and Ram Sarup. It appears that Ram Chander intentionally did not implead other legal heirs of Smt. Gomi as a party in the objection petition as well as suit filed by him.

Order 21 Rule 99 of the Code deals with dispossession by decree-holder or purchaser. Rule 101 envisages questions to be determined. The same being relevant and germane to the present controversy are extracted hereinbelow for ready reference:-

99. Dispossession by decree-holder or purchaser.- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

101. Questions to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

A plain but careful reading of Rule 101 leaves no manner of

doubt that all questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 99 shall be determined by the court dealing with application and not by a separate suit and for this purpose, the court shall notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Since the objection petition preferred by the appellant was dismissed on merits and the order has attained finality, permitting the appellant to maintain the instant suit is nothing but crossing the legal bar created under rule 101, extracted hereinbefore.

As an upshot of the aforesaid discussion, it can safely be held that earlier Ram Chander brother of the appellant remained pursuing litigation both before the executing court by filing objection petition and suit before the civil court and thereafter when he failed in his effort to seek any relief qua his entitlement to inherit to the estate of Sh.Tula Ram, the appellant started another bout of litigation by filing civil suit in the year 2009 and then the objection petition before the executing court just within two months thereafter. It is not plea of the appellant that his brother Ram Chander had hostility against him or his siblings or he did not pursue his remedy in right earnestness with a view to cause wrongful loss to the appellant or his other brothers and sisters. In this view of the matter, I do not find any reason to interfere in the judgment and decree passed by the Court in Appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

6.5.2019
paramjit

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