

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

CR-3609-2019 (O&M)
Date of decision: 10.07.2019

Smt. Chaman and others

...Petitioners

Versus

Jeet Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Kul Bhushan Sharma, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

This revision petition is directed against order dated 30.04.2019, passed by Addl. Civil Judge (Sr. Divn.), Palwal, vide which the objections against draft sale deed as well as application under Section 47 CPC have been dismissed.

Briefly stated facts of the case are that Smt. Phoolwati, since died, along with her sons Deshraj, Balraj and daughter Bimla had entered into an agreement to sell land measuring 8 kanals, situated at Village Rehrana, Tehsil & District Palwal for Rs.65 lacs with Jeet Ram on 03.10.2012. However, the sale deed was not executed by Smt. Phoolwati and others in favour of the plaintiff, who had filed a suit for specific performance against them. Smt. Phoolwati had died during the pendency of the suit. The suit was decreed. The plaintiff-DH filed an execution application craving for issuance of directions to legal heirs of Smt. Phoolwati and other defendants, to execute the sale deed in his favour.

The Executing Court asked the decree holder to submit the draft sale deed, which he did. Objections were filed on behalf of judgment debtor Nos.4 to 6 to the effect, that Smt. Phoolwati had executed a registered Will dated 31.03.2009 in favour of her sons Deshraj and Balraj and mutation No.3003 was sanctioned in that regard; Sh. Deshraj had died on 17.07.2015 and he had executed a registered Will dated 22.05.2015 in favour of his sister Smt. Bimla in respect of the suit property and mutation No.3082 was also sanctioned in that respect. In that way, three daughters of Smt. Phoolwati, namely, Rajbala, Birbala and Chaman had not received any share in the estate of Smt. Phoolwati or Deshraj. Therefore, they could not be ordered to execute the sale deed in favour of DH/plaintiff. The objections were contested by the DH/plaintiff. Vide impugned order, the Executing Court has dismissed the objections with the following observations:-

“Perusal of file reveals that suit of Decree-holder (Jeetram) was decreed with cost and defendants are directed to execute the sale deed in favour of plaintiff after receiving the remaining amount of sale consideration of Rs. 35 lacs from plaintiff within three months from the date of judgment and further directed to handover vacant possession of suit property to plaintiff after execution of sale deed in favour of plaintiff in terms of agreement dated 03.10.2012. Perusal of judgment and decree dated 18.11.2015 reveals that present Judgment-debtors namely Smt. Birbala, Smt. Rajbala and Smt. Chaman were also parties to the suit alongwith Deshraj(deceased) and Balraj and all defendants are directed to execute the sale deed in favour of plaintiff. In para 29 of the judgment, it was discussed that agreement dated 03.10.2012 was executed by all the defendants and now, daughters of Smt. Phoolwati cannot deny their liability in this case on the

*basis of Will of Smt. Phoolwati. Further perusal of draft sale deed available on file reveals that same was drawn in consonance with judgment and decree dated 18.11.2015 and total shares of all the vendors has been included in the draft sale deed. As far as plea of Judgment-debtors alleging that share of Smt. Phoolwati, who was executant of the agreement to sale dated 03.10.2012 is inherited by defendants no. 1 and 2 is concerned, same has been discussed in the judgment and decree itself and it was specifically mentioned that all Judgment-debtors are liable to execute the sale deed in favour of the Decree-holder and Judgment-debtors cannot deny their liability on the ground of Will executed by Smt. Phoolwati. It appears that present applications were filed just to prolong the execution of sale deed. Hence, objections to the draft sale deed as well as application under Section XLVII of CPC filed by Judgment-debtors are dismissed being false and frivolous. In view of Court order dated 06.11.2018, Sh. Mahesh, Reader attached with the Court is already appointed as Local Commissioner to get the sale deed executed and his fee is already assessed Rs. 2500/- which was to be paid by Decree-holder. Now, case file be put up on **14.05.2019** with regard to awaiting report.”*

This order left the revisionists aggrieved and they have filed the present revision petition.

I have heard learned counsel for the revisionists besides going through the record and I find that there is no merit in the revision petition. The revisionists have been directed by the Executing Court to join in execution of the sale deed in favour of the plaintiff/DH as legal representatives of deceased/defendant Smt. Phoolwati and Deshraj, with regard to the land which was subject matter of the agreement and the suit and not in their independent capacity. Though, as per case of revisionists,

Smt. Phoolwati had executed a registered Will dated 31.03.2009 in favour of her sons Deshraj and Balraj and mutation was sanctioned on the basis thereof and further Deshraj had also died on 17.07.2015 and he had executed a registered Will dated 22.05.2015 in favour of his sister Smt. Bimla in respect of the suit property and mutation No.3082 was entered in that respect, however, as a matter of abundant caution, the Executing Court seems to have directed the natural heirs of the deceased defendants/JDs to join in execution of the sale deed to avoid any further complication. The order can certainly be not termed as illegal, arbitrary or perverse. As regards the judgment referred to by learned counsel for the revisionists **Rajinder Kumar Vs. Kuldeep Singh and others**, 2014(1) RCR (Civil) 980 by the Apex Court, is not applicable to the present case due to different facts and circumstances as well as the context in which such observations had been made. Therefore, no ground is there to interfere with the impugned order by exercising revisional jurisdiction. The revision petition is found to be without merit and the same stands dismissed.

10.07.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No