

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ESA-26-2015 (O&M)

Date of Decision: 03.07.2019

Bimla Devi

.... Appellant

Versus

Abhishek Jindal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Mukand Gupta, Advocate for the appellant.

None for respondent No. 1.

Mr. Manu R. Bhardwaj, Advocate for
Mr. Vivek Rattan, Advocate for respondent No. 2 (i).

Mr. Jagtar Kureel, Advocate for respondent No. 3.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, the appellant-auction/purchaser, has laid challenge to the judgment dated 19.02.2015 of the Ist Appellate Court, whereby order of Executing Court dated 22.01.2011, confirming sale deed in his favour was set aside.

Briefly, respondent No. 2-firm-M/s Chanan Ram Devi Dayal, Commission Agents, New Anaj Mandi, Dhuri, filed a suit for recovery of ₹ 1,90,790/- against M/s Ved Parkash Chiranji Lal and its proprietor-Ved Parkash, along with application under Order 38 Rule 5 read with Section 151 CPC.

Upon notice, M/s Ved Parkash Chiranji Lal and its proprietor Ved Parkash, filed reply to the said application.

After considering the rival submissions, the trial Court vide order 19.05.2004 (Annexure A-3) allowed the aforesaid application, thereby directing M/s Ved Parkash Chiranji Lal, to furnish security to the tune of ₹1,87,000/- within seven days from the date of order, failing which its property fully detailed in the head note of application shall remain attached till satisfaction of the decree.

Thereafter, suit of respondent No. 2-firm was decreed in *toto* vide judgment and decree dated 21.08.2006, for ₹ 1,88,870/- along with future interest @ 6% per annum, from the date of filing of suit till its realization.

Judgment-debtor-firm M/s Ved Parkash Chiranji Lal and its proprietor-Ved Parkash, never preferred any appeal against the aforesaid judgment and decree dated 21.08.2006. Therefore, the same attained finality.

Consequently, respondent No. 2-firm filed Execution Petition No. 56 dated 14.08.2007 (Annexure A-4) on 14.08.2007, in which the property of the judgment-debtor already attached as detailed in the head note of application (Annexure A-3) before passing of final judgment was ordered for sale in open auction for 14.11.2007. Consequently, the attached property was put to auction after fixation of reserve price @ ₹10,30,000/-. The appellant was the highest bidder who offered ₹10,56,000/- against reserve price of ₹10,30,000/-. Therefore,

auction sale was confirmed in his favour on 22.01.2011. Thereafter, sale certificate dated 12.09.2011 (Annexure A-15) was issued in favour of the appellant, while dismissing the objections of Abhishek Jindal and Rajesh Kumar, who are nephew and son of JD-Ved Parkash (respondents No. 1 and 3 herein) vide order dated 22.01.2011.

Respondent No. 3-Rajesh Kumar, never preferred any appeal against dismissal of his objections. However, respondent No. 1-Abhishek Jindal, approached the Ist Appellate Court in which respondent No. 3 moved an application for transposing him as appellant, but his application was rejected by the Ist Appellate Court, vide order dated 12.09.2014 (Annexure A-10).

After hearing both the sides, the Ist Appellate Court vide impugned judgment dated 19.02.2015, allowed the appeal of respondent No. 1 and his co-objector-respondent No. 3, while setting aside the order of the Executing Court, confirming auction sale in favour of the appellant dated 22.01.2011 (Annexure A-9).

Learned counsel *inter alia* contends that the property sold in favor of appellant in auction was different to the property claimed by respondent No. 1, because he had purchased some property vide two separate sale deeds of even date i.e. 12.12.1994 (Annexures A-11 and A-12, respectively), which he further sold in the next year i.e. 1995, vide sale deeds dated 28.02.1995 (Annexures A-13 and A-14). Respondent No. 1 and proforma respondent No. 3, did not prove any document of title qua the property which was put to auction and sale was

confirmed in favour of the appellant.

On the other hand, learned counsel for respondent No. 1, who had preferred appeal did not ever choose to contest this appeal, whereas proforma respondent No. 3, whose application for transposing him as appellant was dismissed, has come forward to contest this appeal, but he cannot be permitted to do so, inasmuch as, he never challenged the order of rejection of his aforesaid application.

More so, since, respondent No. 1 and proforma respondent No. 3, did not lead any cogent and convincing evidence coupled with documentary proof qua their title over the property which was put to auction sale by the Executing Court, therefore, this Court is of the considered opinion that the Appellate Court, had erred in setting aside the order of the Executing Court dated 22.01.2011 (Annexure A-9), whereby third party objection of respondent No. 1 and proforma respondent No. 3 were dismissed.

Even otherwise, JD-Ved Parkash, never came forward to challenge the auction sale. Respondent No. 1 is nephew, whereas proforma respondent No. 3 is his son. Therefore, it can safely be said that judgment-debtor, instead of himself coming forward, got filed these frivolous objections through his son and nephew to defeat the legitimate claim of decree-holder-appellant and delay the execution of decree.

In view of the discussion made above, the instant appeal is accepted, impugned order of the Ist Appellate Court dated 19.02.2015, is set aside and order dated 22.01.2011 of the Executing Court is upheld.

Registry is directed to send a copy of this order to Executing Court for compliance.

July 03, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No