

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

CR No.5110 of 2019 (O&M)

Date of Decision: August 27, 2019

Gurdev Kaur & Ors. Petitioners

Versus

Daljit Singh Dhingra & Ors. Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. S.R.Mehta, Advocate for the Petitioners.

Mr. Rakesh Chopra, Advocate for the
Respondents/Caveators.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the order dated 16.8.2019 passed by the Ld. Addl. District Judge, Patiala in an Execution Appeal preferred on behalf of the Petitioners/Judgment Debtors against the order dated 8.7.2019 passed by the Executing Court in Execution Case No.3604 of 2013, vide which, the objections filed on their behalf separately had been dismissed.

2. Background of the matter is that the Civil Suit No.174-T/2004 was filed on behalf of Respondents/Decree-Holders in the Court of Civil Judge (Senior Division) Patiala seeking possession of the decretal property by way of Specific Performance of an Agreement to Sell dated 4.12.2003 executed by the Predecessor-in-interest of certain Petitioners/Judgment-Debtors and other Defendants/JDs. The Suit was decreed in favour of the Plaintiffs/Decree-Holders on

7.9.2010 vide the Judgment of Trial Court (Annexure P-14). The Civil Appeal No.124 of 2010 preferred against the said Judgment was dismissed by the Additional District Judge, Patiala vide its Judgment dated 23.2.2013 (Annexure P-15). The Appellants/Judgment-Debtors preferred RSA No.2575 of 2013 in this Court, which in turn, was also dismissed by a Coordinate Bench vide the Judgment (Annexure P-22) on 3.7.2017. Subsequently, the Review Application being RA-RS-76-C-2017 seeking review of the Judgment in RSA was filed, which again was dismissed by the Court vide its Order dated 7.9.2017 (Annexure P-23). The Petitioners thereafter preferred SLP (Civil) vide Diary No.31410 of 2017 in the Supreme Court, which was dismissed on 09.01.2018 vide Annexure P-24.

3. In the Execution Petition filed on behalf of Decree-Holders, the separate Objection Petitions filed by the Judgment-Debtors were dismissed by the Ld. Executing Court on 4.8.2018, 8.7.2019 and 19.7.2019 (Annexures P-25 to P-27). The Appeal preferred against the order dismissing the Objection Petition passed on 8.7.2019 was put up before the Additional District Judge, Patiala on 30.7.2019, on which date, notice of the Appeal was ordered to be issued to the remaining Respondents for 8.8.2019, but the Ld. Appellate Court declined the prayer for staying the proceedings in Execution vide its order passed on the said date (Annexure P-28). The Petitioners thereafter filed two Applications under Section 151 of the CPC seeking suspension of operation of the execution of the Decree and staying their dispossession from the decretal property for enabling them to approach the Appellate Forum, subject to filing of

undertaking/security alongwith another Application seeking suspension of execution proceedings till the decision of CWP No.2997000/9.8.2019 and SLP Diary No.28848/2019 stated to have been filed before this Court and before the Apex Court respectively. But those Applications were dismissed vide the impugned Order with the following observations -

“It is appropriate to mention here that even at the time of institution of the appeal, learned counsel for appellant has prayed to stay the operation of order passed by learned Executing Court, however the request so made was declined by this Court vide order dated 30.07.2019. The perusal of record annexed along with the appeal preferred by the appellant reflect that initially suit was preferred by Daljit Singh Dhingra and others against the appellant and others seeking relief of possession by way of specific performance of agreement to sell dated 04.12.2003 on dated 22.05.2004. It was decreed vide judgment and decree dated 07.09.2010. The appellant preferred appeal against judgment and decree. Undisputedly, before learned Appellate Court an undertaking was furnished by learned counsel for the appellant in pursuance to order dated 18.12.2010. However, despite dismissal of the appeal vide judgment and decree dated 23.02.2013, the appellant failed to abide by the undertaking so furnished. It is not disputed that vide order dated 02.07.2013, Hon'ble High Court directed executing court to adjourn the execution beyond 31.08.2013. However, later on no such directions were given consequent thereto sale deed has been executed in favour of the DH in compliance to judgment and decree by appointment of local Commissioner on dated 18.04.2016. At the time of execution of sale deed, the matter was still subjudiced before Hon'ble High Court. Despite that at the time of disposal of RSA vide judgment dated 03.07.2017 Hon'ble High Court has not observed if the DH has played fraud upon the executing Court as contended through application in hand. Learned Trial Court has

specifically held vide judgment and decree dated 07.09.2010 that sale deeds dated 09.01.2004 Ex.D6 and Ex.D7 in favour of defendants no.2 to 4 are without consideration and not binding upon plaintiff no.1. Hon'ble High Court has specifically observed that the appellant and late defendant no.1 in order to save the property from being sold to the plaintiffs fabricated the agreement dated 15.05.2003 and 17.09.2003, hence they cannot be held to be bonafide purchasers of the suit land.

The appellants did not get satisfied and preferred review petition before Hon'ble High Court alleging that fraud has been played by DH Daljit Singh, in as much as plaintiff no.2 held the suit property as benamidaar. However, the review petition was rejected vide order dated 07.09.2017 passed by Hon'ble High Court. Similarly, SLP preferred before Hon'ble Supreme Court of India has been dismissed vide order dated 09.01.2018.

In the said backdrop, it is evident that the decree holders are knocking the doors of the Court since year 2004, but are unable to get the possession of suit property despite passing of judgment and decree in their favour in the year 2010. They failed to get the possession despite undertaking furnished on behalf of the appellants before learned appellate court during the pendency of regular first appeal that has been disposed of in the year 2013.

Hence, at this stage of the proceedings pending before learned executing court only on the pretext raised by learned counsel for the appellants that he may kindly be granted interim protection by availing the forum of Hon'ble Supreme Court of India and thereafter, grant of period of 4 months to pursue the remedy before learned appellate forums, the operation of order under challenge cannot be suspended or stayed so as to rub salt on the wounds of decree holder, who is contesting his claim since year 2004 till date. Accordingly, both the applications stands rejected.”

4. This Court on going through the impugned Order does not see any unreasonable observation against the Petitioners considering the

entire background of the previous proceedings as noted by the Ld. Addl. District Judge. It may be mentioned that the substance of the submissions raised before the Ld. Executing Court was to the effect that the original Judgment and Decree were a nullity inasmuch as the original Suit itself was non-maintainable, since no relief to have the Sale Deeds allegedly executed by one Defendant/JD in favour of another to be declared null and void, had not been sought for. Without speculating on the merits of the contentions raised and yet to be raised before the Appellate Court, this Court may observe at the outset that the settled position of law is that an Executing Court cannot “go behind the Decree”. A Decree sought to be treated as a nullity can be normally held so in rather limited situations such as one where the Court passing the same lacked in “inherent jurisdiction” to entertain the subject matter, or that the Decree was passed against a party already dead. The impugned Decree has been upheld even at the second appeal stage, and so there was little justification for the Executing Court to regard it as a nullity as urged on behalf of Judgment-Debtors. The Ld. Appellate Court was therefore, apparently justified in refusing to stay operation of the order rejecting the objections filed on behalf of Petitioners considering the long history of litigations at various levels right up to the Supreme Court, in which, they had invariably lost.

5. This Court thus finds no reason to interfere with the impugned order. The Revision is therefore, dismissed with a request to Ld. Appellate Court to endeavour to dispose off the Appeal preferred on behalf of Petitioners as expeditiously as possible and preferably

within a period of three months from the date of communication of this order, and without in any manner being influenced by any other observation made in the body of this Order.

(SUDIP AHLUWALIA)
JUDGE

August 27, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes |