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

CR No. 6360 of 2019

Date of Decision: 15.10.2019

Gurmit Kaur (now deceased) through her LR

-Petitioner

Vs

Mohinder Singh and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dheeraj Mahajan, Advocate,
for the petitioner.

Mr. Vipin Mahajan, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner being son of Gurmit Kaur has preferred this revision petition against the order dated 12.09.2019 passed by Civil Judge (Junior Division), Gurdaspur vide which objections filed by the petitioner were dismissed without framing proper issues.

Perusal of the record would show that earlier a suit for declaration was filed by the petitioner on the basis of Will dated 14.07.1980 executed by Harbans Kaur in her favour (Gurmit Kaur). (Defendant therein) i.e. the present respondent also set up a Will dated 07.07.1980 executed by Harbans Kaur in his favour (Mohinder Singh).

The trial Court dismissed the suit in the year 1982. The lower Appellate Court dismissed the appeal in the year 1983. After dismissal of Regular Second Appeal in the year 2007, SLP was also dismissed by the Hon'ble Apex Court in the year 2007.

Plaintiff was held to be in possession. A decree for permanent injunction was granted in her favour. He can be dispossessed in due course. Thereafter, suit for possession was filed by the respondent. The trial Court decreed the suit vide judgment dated 23.11.2012. The appeal filed by the present petitioner-defendant was dismissed by the lower Appellate Court on 09.07.2015. No RSA was filed against the judgment and decree passed by the lower Appellate Court. The decree holder-respondent No.1 filed execution on 07.08.2015. At one point of time, execution was dismissed in default in the year 2017, but later on the same was restored.

Learned counsel for the petitioner states that a compromise was effected between the parties on 04.09.2015 and on the basis of said compromise, objections were filed on 20.03.2017 before the Executing Court. In reply to the objections, decree holder pleaded total denial to the compromise. Objections were dismissed by the Executing Court vide order dated 12.09.2019.

The present revision petition has arisen from the said order.

I have heard learned counsel for the parties.

Learned counsel for the petitioner by referring to the order dated 19.02.2018 passed in Civil Revision No.4955 of 2016 submits that if the compromise is effected after passing of decree by the lower Appellate Court, still the Executing Court is under obligation to decide the objections after framing proper issues.

On the other hand, learned counsel for respondent No.1 states that all frivolous objections are not to be decided by following proper procedure. He places reliance upon **M/s Sunil Auto Service vs Parikshant Suri and others, 2011(1) RCR (Rent) 452.**

I have considered the controversy.

Evidently, the petitioner has lost the litigation based on title upto the Hon'ble Apex Court. Since possession of the petitioner was found to be unauthorised, therefore, liberty was given to respondent No.1 to take recourse to lawful proceedings for obtaining possession from the petitioner. That is, how, suit for possession came to be filed by respondent No.1.

The suit has been decreed by the trial Court as well as by the lower Appellate Court and those decrees have

attained finality in view of no further challenge made by the petitioner. The Executing Court cannot go behind the decree particularly when the factum of compromise has been denied by respondent No.1.

In view of ratio as laid down in **M/s Sunil Auto Service's case (supra)**, the Executing Court is not obligated to decide all frivolous objections by way of following proper procedure of framing issues and then allow the parties to lead evidence. Such objections can be rejected summarily. Resistance at the instance of a person having no locus should be treated to be a mere attempt to delay the proceedings of execution in view of law laid down in **Rana Mahajan and another vs Shri Purshottam Krishan and others, 2014(2) RCR (Civil) 331.**

In view of law laid down by the Hon'ble Apex Court in **M/s Sunil Auto Service's case (supra)**, the view expressed by the Co-ordinate Bench in Civil Revision No.4955 of 2016 cannot be relied as in the aforesaid case, the compromise in question was partially given effect in the revenue record and mutation was also sanctioned to the extent of compromise in issue.

Later on the parties may have resiled from the compromise. Facts of the aforesaid case are distinguishable in the light of law laid down by the Hon'ble Apex Court in **M/s Sunil**

Auto Service's case (supra).

For the reasons recorded hereinabove, I do not wish to concur with the arguments raised by learned counsel for the petitioner.

This revision petition is found to be totally devoid of merits and the same is accordingly, dismissed.

15.10.2019

Jyoti Yadav

**(RAJ MOHAN SINGH)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No