

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ESA-60-2019 (O&M)

Date of decision: 24.10.2019

Sushil Kumar

..... Appellant

Versus

Anand Sarup (now deceased) through his LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ivneet Pabla, Advocate for the appellant.

RAMENDRA JAIN, (ORAL)

Through this second appeal third party objector has laid challenge to order dated 05.10.2019 of lower Appellate Court, affirming, order of Executing Court dated 30.11.2018, whereby his objections were dismissed.

Briefly, deceased respondent No. 1-Anand Sarup and his children filed a suit for partition against respondent No. 2-Smt. Rattan Bala, pleading that they were co-sharers to the extent of 1/2 share each being joint purchasers of the suit land measuring 1 Bigha, situated at village Abdulahpur, Tehsil Kalka, District Ambala. The suit was hotly contested by respondent No. 2. Learned trial Court after holding trial, decreed the suit, vide judgment and decree dated 29.11.1997 (Annexure P-2), which attained finality, after dismissal of her appeal vide judgment and decree dated 28.03.2000 by the Ist Appellate Court and non-admission of her second appeal by this Court.

Thereafter, decree-holder-Anand Sarup, moved an application for preparation and passing of final decree. During the pendency respondent No. 3-Sneh Lata, wife of appellant-objector, filed third party objections claiming herself to be a co-sharer in the suit property by virtue of judgment and decree dated 04.09.1986 passed in Civil Suit No. 315 dated 26.08.1996 titled as 'Munish Kumar Vs. Rattan Bala', whereby respondent No. 2-Rattan Bala, transferred 2 biswas of share to her grandson, namely; Munish Kumar S/o Sushil Kumar and Sneh Lata (appellant and respondent No. 3 herein, respectively) pleading that her son-Munish Kumar, expired issueless on 26.05.2000. Therefore, share of Munish Kumar her son had fallen to her. Resultantly, she had become co-sharer in the suit land to the extent of 2 biswas of land. Objections of respondent No. 2-Saneh Lata were allowed by the trial Court vide order dated 04.01.2013 (Annexure P-3). Consequently, fresh preliminary decree after impleading respondent No. 3 (wife of appellant-objector) was passed vide order Annexure P-3.

During the pendency of application for passing of final decree, Anand Sarup, expired and his legal heirs were brought on record on 26.10.2012 by the trial Court. A local commissioner was appointed to visit the spot and suggest mode of partition, who submitted his report dated 08.02.2013 (Annexure P-5), pointing out that out of total suit land measuring 1 bigha i.e. 20 biswas, 4 biswas had already been acquired by the State Government, therefore, 16 biswas of land was in existence at the spot.

Respondent No. 3-Saneh Lata (wife of appellant-objector)

and he himself both filed objections to the local commissioner's report Annexure P-5. Simultaneously, respondent No. 3 and appellant-objector filed separate suits to challenge judgment and decree Annexure P-2, but remained unsuccessful up to this Court in Civil Revision No. 7202 of 2009. A categorical observation was made by this Court in order dated 01.07.2010, that second civil suit filed by respondent No. 3 was nothing but, only an abuse of process of law.

Since, the decree-holders could not succeed in obtaining final decree, despite litigating for about 20 years, therefore, they filed CR-5816-2012, wherein vide order dated 01.10.2012, trial Court was directed to pass final decree within 4 months from the date of receipt of certified copy of that order.

Thereafter, the trial Court after hearing all the affected parties and dealing with their objections passed final decree dated 08.05.2013 (Annexure P-7), relying upon the report of local commissioner Annexure P-5. After dismissal of appeal against the order Annexure P-5, vide judgment and decree dated 18.03.2016 (Annexure P-8), the same attained finality. Thereafter, decree-holders being legal heirs of respondent No. 1-Anand Sarup, filed execution, wherein now, appellant-objector took the front and filed objections in place of his wife Saneh Lata-respondent No. 3. The Executing Court, after hearing both the sides dismissed his objections vide order dated 30.11.2018.

Being, dis-satisfied, he approached lower Appellant Court, but remained un-successful as his appeal too was dismissed vide impugned order dated 05.10.2019.

Learned counsel for the appellant *inter alia* contends that both the Courts below have failed to appreciate that as per revenue record appellant-objector was in possession as “*Gair Marusi*” tenant over some portion of the suit land and, thus, warrants of possession could not have been executed against him, without permitting him to prove his case by holding trial.

Having given thoughtful consideration to submissions of learned counsel for the appellant-objector, this Court finds the instant second appeal merits dismissal for the reasons to follow:

Admittedly, in the revenue records, suit property was recorded as “*gair mumkin*”, which means un-cultivable. It is needless to mention here that on an un-cultivable land there cannot be any “*gair marusi*” tenant. Therefore, any revenue entry in favour of appellant-objector showing him as “*gair marusi*” tenant has to be considered as stray entry, more particularly, when appellant-objector is not having any rent receipt or rent agreement in his favour. Consequently, on the basis of illegal entries, he was not entitled to claim himself in possession of the suit land as “*gair marusi*” tenant.

As per own pleadings of the appellant-objector, local commissioner had visited the spot on the direction of trial Court to suggest mode of final partition. In case, appellant-objector would have been in possession of the suit property, he must have come to know about the pending litigation in question and the visit of local commissioner, but appellant-objector did not ever choose to become a party in the suit by moving any application under Order I Rule 10 CPC. Silence of

appellant-objector throughout for around more than 20 years in itself speaks volumes about his conduct that initially, he, through his wife and now in his individual capacity is out and out to usurp the suit land, inasmuch as, initially, wife of appellant-objector continuously hold the front and kept on litigating with the decree-holders. Now, the appellant-objector taking baton from his wife on false plea of his possession as “*gair marusi*” tenant over the same has come in front. It is un-explained on the file that what prevented the appellant to join proceedings at that stage, when his wife had filed objections. He, thus now, cannot be permitted to stall the execution of final decree.

I have gone through the orders of both the Courts below and find no illegality or perversity in the same.

Dismissed.

Executing Court is directed to satisfy the execution within two months positively from the date of receipt of certified copy of this order.

It is, however, made clear that there is no necessity for the executing Court for framing the issues.

October 24, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No