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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.9276 of 2018

Date of Decision: 14.02.2019

Vijay Pal Singh

..... Petitioner

Versus

Madan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

The present revisional petition is directed against the order dated 08.10.2018, (Annexure P-4) passed by the Ld. Civil Judge (Junior Division), Rewari, in Execution Case No.249/2016.

2. Vide the impugned order, the objections against the execution filed on behalf of the petitioner, who was one of the judgment debtors in the original Decree which was the subject matter of the execution, were dismissed. It transpires that an Agreement for Sale of the Decretal Property was executed by another judgment debtor – Rohtash in favour of one Khushi Ram (original defendant No.2) on 13.08.2003. The said Khushi Ram on the strength of the aforesaid Agreement to Sell itself, and without having acquired complete title over the Decretal Property by way of any registered Deed of Sale, in turn entered into another Agreement to sell the

said property in favour of the plaintiff/decree holder on 05.09.2003. Consequently, the said plaintiff subsequently filed his Suit for Specific Performance not only against Rohtash and Khushi Ram, but also against two other defendants, namely Bijender and Vijaypal. That was so because on 15.08.2003, Rohtash executed a registered Sale Deed in favour of Bijender for a portion of the Decretal Land, and on that very date, the said Bijender in turn executed another registered Sale Deed in favour of the petitioner/judgment debtor qua the same land.

3. The Suit was decreed in favour of the plaintiff/decree holder and the Appeal preferred against the same was dismissed.

4. Now during the course of the execution proceedings, the petitioner/judgment debtor exposed a new dimension of the disputed facts by contending that even before the execution of the Agreement for Sale in favour of the plaintiff/decree holder on 13.08.2003, the original owner Rohtash (judgment debtor/defendant No.1) had already executed a registered Sale Deed in favour of one Joginder Yadav on 19.04.2001 for an area measuring 7 Kanals and 6 Marlas out of the Decretal Land, and so the Decree could not be executed qua the said land.

5. The Ld. Court below, however, dismissed the petition of objections by observing, *inter alia*:-

“Hearing has been provided. The present execution petition has been filed for execution of the judgment and decree dated 31.01.2012 passed by Sh. R.S.Choudhary, the then Ld. ADJ, Rewari vide which the suit for specific performance of the agreement filed by DH Madan Singh against the judgment debtors was decree in toto and defendants were directed to execute

the sale deed as per the terms of the agreement entered between the parties. It is also admitted on record that Jd/objector Vijaypal had filed a revision RSA No.1667 of 2012 against the judgment and decree dated 31.01.2012 before the Hon'ble High Court of Punjab & Haryana and vide judgment dated 16.08.2017 passed by Hon'ble Justice Ajay Tiwari the said RSA has been dismissed. In the judgment dated 16.08.2017, it has been held by Hon'ble High Court that even if the plea of bonafide purchaser is accepted, it would still be incumbent upon the party setting up the claim of specific questions which can be asked in cross examination which may betray the fact that he knew about the earlier transaction. Jd/objector Vijaypal did not appear before the Lower Appellate Court for recording his statement for his cross examination regarding his plea of bonafide purchaser. As a result the RSA filed by Objector Vijaypal was dismissed.

Further, all the objectors which are raised in the objections filed by Jd are pertaining to the merit of the case which has already been decided between the parties till Hon'ble High Court and the judgment dated 31.01.2012 passed by Sh. R.S.Choudhary Ld. ADJ, Rewari has been upheld. It is a well settled principle of law that an executing court can not go behind the decree and can not allow the party to re-agitate the matter again on merit which has already been subject matter of the suit and appeal. Therefore, in these circumstances the objections petition filed by the Jd/objector Vijaypal are not maintainable and same is dismissed accordingly.”

6. This Court, after having considered the submissions made by Ld. Counsel for the petitioner and on going through the impugned order, is

in complete agreement with the Ld. Court below that in the absence of any plea qua existence of a *bona-fide* purchaser of the disputed land, as also for lack of evidence in support of such contention, the objections raising such a plea at the stage of execution at the instance of the objector who, in any case, was not even a party in the alleged transaction dated 19.04.2001, could not be considered. Undisputedly, an Executing Court cannot go behind the Decree, more so at the instance of a judgment debtor, who otherwise was obligated to raise all the disputed facts at the trial stage itself.

7. For the aforesaid reasons, this Court finds no substantive material in the present revisional petition, which is accordingly dismissed.

14.02.2019*Apurva***(SUDIP AHLUWALIA)
JUDGE**

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