

CR-11690-2018 (O&M)

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

CR-11690-2018 (O&M)

Date of decision : 08.01.2019

Siri Niwas (deceased) through LR's and another

... Petitioners

Versus

Ram Pal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate for the petitioners.

Mr. Karan Singh, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 27.11.2018, whereby the objection to the execution application bearing No.221 of 2017 for violation of the judgment and decree dated 11.10.1986 sought to be executed under the provisions of Order 21 Rule 32 of the Code of Civil Procedure, has been dismissed.

The case has a checkered history. The respondents-plaintiffs instituted the Civil Suit No.883 of 1982 for injunction against the petitioners-defendants, herein, from forcible dispossession and interference into peaceful possession on the basis of the revenue record. The petitioners-defendants had taken umpteen number of defences including the change of khasra girdawaries upto the level of Financial Commissioner i.e. upto the revenue court. By declining the aforementioned contentions, the suit was decreed vide judgment and decree dated 11.10.1986. Civil appeal bearing No.221/13 of 1986 was filed, which was dismissed vide order dated

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01.05.1987 and thereafter, the aforementioned decree has attained finality. The petitioners-defendants had filed a civil suit challenging the Will of Mmanohari Devi, wherein, the respondents were arrayed as defendants being beneficiaries. The same was dismissed and upheld upto Hon'ble the Supreme Court. The third suit was filed by the petitioners-defendants for permanent injunction against the respondents-plaintiffs, herein and defendants in the third suit, which was dismissed on 20.03.1984 and the decree has attained finality.

Learned counsel for the respondents-plaintiffs submitted that Civil Suit filed by the petitioners-defendants challenging the Will reached upto this Court in RSA No.439 of 1987, but the same was dismissed vide order dated 21.09.2016. Thereafter, the petitioners approached the Hon'ble the Supreme Court and the Apex Court, vide order dated 11.11.2016, in Special Leave Petition No.31331 of 2016, had given the liberty to the petitioners to file the review petition. Review petition was dismissed, vide order dated 21.04.2017. Against that Special Leave Petition bearing No.26846 of 2017 was filed, which has been dismissed vide order dated 27.10.2017. Against the dismissal of the Special Leave Petition, review petition (civil) bearing No.911 of 2018 has also been dismissed on 10.04.2018. The aforementioned facts have not been disclosed to this Court by filing the present revision petition, even the decree which was alleged to be violated, has not been attached and prayed for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the present revision petition.

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The facts, as noticed above, are not in dispute.

It would be apt to reproduce the operative part of the order dated 21.09.2016 of this Court, whereby the regular second appeal bearing No.439 of 1987 has been dismissed; order dated 11.11.2016 of Hon'ble the Supreme Court granting liberty to the petitioners to file the review application; order dated 21.04.2017 of this Court dismissing the review application; order dated 27.10.2017 of Hon'ble the Supreme Court dismissing the Special Leave Petition; and order dated 10.04.2018 of Hon'ble the Supreme Court dismissing the review application filed in SLP No.26846 of 2017, which read thus:-

"Order dated 21.09.2016

I have heard learned counsel for the parties and appraised the paper book and of the view that the defendants had been successful in discharging the onus of proving the Will, through testimony of Scribe and DW6 from the office of Sub-Registrar, therefore ratio decidendi culled out by Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case. Para No.11 of the same reads as under:-

"11. The attesting witnesses having died, the Sub Registrar, who had registered the Will was examined as PW-3. He was examined on commission and in response to the questions posed to him, particularly, question no.2, he had set out the circumstances in which the attesting witnesses as well as the Testator had signed on the document. This part of the evidence has been elaborately considered by the High Court to record its satisfaction that the execution of the Will has been proved on the basis of the evidence of the Sub-Registrar i.e. PW-3. Having considered the aforesaid aspect of the matter, we are of the view that the satisfaction recorded by the High Court does not suffer from any apparent

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infirmity or fundamental error which would require correction in the exercise of our jurisdiction under Article 136 of the Constitution of India. All the alleged suspicious circumstances surrounding the execution of the Will being capable of being understood in the manner indicated above and the requirement of Section 69 of the Indian Evidence Act, 1872 having been satisfied by the evidence of PW-3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs.”

Examination of Sub-Registrar is sufficient to prove the Will, therefore, there is no force in the submission of Mr. Dinarpur, in relying upon the statement of DW4 and DW5 as DW4 and that DW5 have not uttered a single word regarding the Will. Even if their evidence to be discarded, in my view, as noticed above defendants have proved the Will. She was exclusive owner of the property.

No ground for interference is made as the same are based on appreciation of oral and documentary evidence.

Accordingly, appeal is dismissed.

Order dated 11.11.2016

The learned senior counsel appearing on behalf of the petitioner seeks permission to withdraw the special leave petition so as to enable the petitioner to file a review application before the High Court. Permission is granted. The special leave petition is dismissed as withdrawn.

However, we clarify that if the review application is decided against the petitioner, it will be open to the petitioner to approach this Court again for challenging the impugned judgment.

Order dated 21.04.2017

This Court called upon the learned counsel for the

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applicant/appellants to apprise this Court as to how the provisions of particular paragraph of the Mullah Law would apply qua nature of the property to be ancestral being inherited by a person of 4th generation, but no provision of law or case law has been filed that Manhori Devi, being the widow of Atma Ram, could execute Will branding her to be exclusive owner, in the absence of reference to any provision of law or relevant Section 14(1) of the Hindu Succession Act in view of the ratio decidendi culled out by the Hon'ble Supreme Court in Vaddeboyina Tulasamma and others Versus Vaddeboyina Sesha Reddi (dead) by L.Rs, 1977 (3) SCC 99 and various other judgments. As regards the other point of non-compliance of the provisions of Section 69 of the Indian Evidence Act, the children of the attesting witnesses have not been cogent and coherent. I am of the view that their testimony would be meaningless in view of the judgment recorded in the judgment sought to be reviewed, i.e., Ved Mitra Verma Versus Dharam Deu Verma, 2014 (15) SCC 578. It is now settled law that in the absence of the availability of the attesting witnesses, the examination of the Sub Registrar with regard to the registered Will is sufficient requirement of law. In my view, the aforementioned points sought to be reviewed, are not germane to the provisions of Sections 47 and 114 of the CPC and, therefore, no ground for review of the order is made out. Resultantly, the review application is dismissed.

Order dated 27.10.2017

Heard the learned counsel for the petitioners and perused the relevant material. We find no merit in the present Special Leave Petition. The Special Leave Petition is accordingly dismissed.

Order dated 10.04.2018

This Review Petition has been filed against the order dated 27.03.2017 whereby the Special Leave Petition was dismissed. Prayer for oral hearing is rejected.

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We have perused the Review Petition as well as the grounds in support thereof. In our opinion, no case for review of order dated 27.03.2017 is made out. Consequently, the review petition is dismissed."

All these facts have not been disclosed to this Court. An attempt has been made to thwart the execution of the judgment and decree dated 11.10.1986 alleging that the petitioners are in possession of the suit property and the defendants have been dispossessed and the remedy is to file the independent suit.

I am afraid the aforementioned contentions are not sustainable as the injunction suit filed by the petitioners-defendants against the respondents-plaintiffs, herein, were arrayed as defendants, was dismissed, vide judgment and decree dated 20.03.1984 and has attained finality. An attempt has been made to seek interim order by misrepresentation and concealment of the facts, aforementioned.

The present revision petition is dismissed with costs of ₹50,000/- to be paid to the respondents-plaintiffs. In case of non-payment of costs, the respondents-plaintiffs shall be at liberty to move an appropriate application in accordance with law.

08.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**