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

CR-3788-2016 (O&M)

Date of decision : 24.02.2020

Om Parkash

... Petitioner

Versus

Satpal Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. P.S. Jammu, Advocate for the petitioner.

Mr. Adarsh Jain, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been filed for setting aside the execution proceedings in Civil Suit No.961 dated 22.06.2008.

2. The brief facts required to be noticed in the present case are that the defendant-petitioner was owner in possession of House No.2M/69, NIT Faridabad Area, measuring 170 square yards, which he had inherited from his father Jethanand. Jethanand had purchased the said house from the Ministry of Rehabilitation, vide a duly executed and registered sale deed dated 11.06.1979. On 15.01.2008, an agreement to sell qua the said property was entered into between the defendant-petitioner and the plaintiff-respondent. The Civil Suit No.961 of 22.09.2008 was filed by the plaintiff-respondent for declaration and consequential relief of possession. On 27.09.2008, the suit was dismissed as withdrawn and the following order was passed:-

"Heard. In view of the statement made by the plaintiff, present suit is dismissed as withdrawn. File after due compliance be

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consigned to record room."

3. In 2010, an Execution Petition was filed by the plaintiff-respondent for execution of the alleged decree dated 27.09.2008. The defendant-petitioner was proceeded against *ex parte* in the said execution proceedings. On 09.06.2012, the following order was passed in the execution proceedings:-

"Report of L.C. Sh. Ram Dutt received wherein he has stated in the present case, he was appointed as L.C. on 25.02.2012 and that he got executed a sale deed in favour of DH on 02.03.2012. A copy of sale deed has also been placed on record.

Ld. counsel for the DH has made a statement, that the LC has got executed a sale deed in favour of the DH. As such, he does not want to pursue the present execution petition and withdraws the same. He has further prayed that the petition be dismissed as being satisfied. Heard. Considering the statement of the counsel for DH as well as the report of LC, the execution petition stands dismissed as withdrawn, being satisfied. File be consigned to record room, after due compliance."

4. Aggrieved by the initiation of execution proceedings and the orders passed thereupon, the present revision petition has been filed.

5. I have heard learned counsel for the parties.

6. It has been contended by learned counsel for the defendant-petitioner that the Executing Court could not have proceeded with the matter, inasmuch as there was no decree in existence. In fact, there is no order also, which could have been executed.

7. Per contra, learned counsel for the plaintiff-respondent has contended that the said order was passed on 09.06.2012 and the present

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revision petition was filed in the year 2016 after a delay of four years. However, he is not able to controvert the fact that there is no decree or order in existence except for the order dated 27.09.2008, whereby the suit was dismissed as withdrawn.

8. Sections 2(2) and 2(14) of the Code of Civil Procedure, 1908, read as under:

"Section 2 (2)

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 2 (14)

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree"

9. Order 21 of the Code of Civil Procedure, 1908, deals with the execution of the decree and order. Order 21 Rule 10 of the Code of Civil Procedure reads as under:-

"10. Application for execution— Where the holder of a decree

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desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof."

10. In the instant case, which is also an admitted fact, there exists neither any judgment nor a decree on the basis of the compromise. There is merely an order dated 27.09.2008, whereby the suit was dismissed as withdrawn. In the absence of a decree or executable order, it is not understandable as to how the execution proceedings could have been initiated and further entertained by the Court below. Though, the present revision petition has been filed after a delay of four years, yet to permit an illegal proceeding and an order, which is *void ab initio*, to stand would be travesty of justice.

11. Since in the present case, as is writ large from the facts noticed above, there is neither a judgment and decree nor an executable order, how execution of the same could have been ordered is unfathomable. The Executing Court has fallen in a grave error resulting in gross miscarriage of justice, necessitating intervention of this Court under Article 227 of the Constitution of India. As a necessary corollary, execution proceedings and all subsequent proceedings on the basis of the said execution proceedings are held illegal, null, and void.

12. In view of the above, the present revision petition is allowed.

(ALKA SARIN)
JUDGE

24.02.2020
Yogesh Sharma

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No