

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

CR No. 5803 of 2017 (O&M)

Date of decision: 04.03.2020

Ajaib Singh since deceased through Lr.

....Petitioner

VERSUS

Gurmit Kaur and ors.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

Mrs. R.K. Thind, Advocate
for respondent No.1.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 07.08.2017 (Annexue P-1) passed by Executing Court whereby objections (Annexure P-2) filed by the petitioner (Judgment debtor) under Sections 47 and 60 read with Section 151 of Code of Civil Procedure (in short 'CPC') have been dismissed.

The sole submission made by the counsel for the petitioner is that decree for possession in counter claim filed by the respondent in a suit for permanent injunction filed by the petitioner (since deceased) represented by LRs was passed on 06.06.2000, therefore, the application for execution filed on 30.11.2015 is barred by limitation, and the same is liable to be dismissed. In support of his contention, he has relied upon

judgments of Hon'ble the Supreme Court **Ram Bachan Rai and ors. Vs. Ram Udar Rai and ors., 2006(2) RCR (Civil) 675** and **Bimal Kumar and anr. Vs. Shakuntala Debi and ors., 2012(2) R.C.R. (Civil) 539.**

Counsel representing the respondent/decree holder has supported the impugned order with the submission that decree for possession passed by the trial Court became subject matter of appeal before the District Judge and the same was dismissed on 16.10.2001. The regular second appeal preferred by the petitioner was dismissed by the High Court on 21.09.2004. It is further argued that as the decree passed by the trial Court has merged into the decree passed by the High Court on 21.09.2004, execution application filed within 12 years from the date of decree dated 21.09.2004 has rightly been held to be within limitation. In support of her contention, she has relied upon judgment of Hon'ble the Supreme Court **Chandi Prasad Vs. Jagdish Prasad, 2005 (2) RCR (Civil) 737.** Reference is also made to judgment of this Court **Sita Ram Vs. Smt. Mahadi and ors., 2006(3) RCR (Civil) 42.**

The question for consideration is 'whether limitation to file application for execution in the circumstances of the present case would start w.e.f. 06.07.2000 or 21.09.2004 when the appeal preferred by the petitioner to assail the judgments and decrees passed by the Courts was dismissed on merits after hearing the parties even if there was no stay against operation of the judgment and decree passed by the trial Court either in appeal before the Appellate Court or in regular second appeal by

the High Court'.

The controversy raised in the present petition is squarely covered against the petitioner by judgment of Hon'ble the Supreme Court in **Chandi Prasad's case (supra)** wherein the Court has held in Paras 20 and 23 of the judgment, quoted below:

20. It is axiomatic true that when a judgment is pronounced by a High Court in exercise of its appellate power upon entertaining the appeal and a full hearing in presence of both parties, the same would replace the judgment of the lower court and only the judgment of the High Court would be treated as final. [See U.J.S. Chopra Vs. State of Bombay, AIR 1955 SC 633]

23. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court.

In para 24(42), the Court has held to the following effect:-

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68)

Perusal of the aforesaid judgment reveals that neither any such issue was raised before the Court nor adverted to if there was any stay by the Court in appeal against operation of the judgment and decree passed by the trial Court. Taking into consideration the enunciation laid down in **Chandi Prasad's case (supra)** there is no escape from conclusion that since the decree passed by the trial Court merged into the decree passed by the High Court on 21.09.2004, application for execution filed on

30.11.2015 i.e. within 12 years from the said decree is within limitation, as has been so held by the executing Court. This Court in **Sita Ram' case (supra)** has also dealt with a similar issue and by relying upon **Chandi Prasad's case (supra)** has held that the decree shall be enforceable from the date of decree passed by the final Court of appeal. In this view of the matter, contention raised by the petitioner is not meritorious and has rightly been rejected.

To be fair to the petitioner, counsel has relied upon judgments of Hon'ble the Supreme Court **Ram Bachan Rai and others's case (supra)** and **Bimal Kumar and another's case (supra)**, wherein the Court had decided the issue in view of the peculiar facts and circumstances of the case, therefore, the referred judgments have no bearing on the facts of case at hand. Counsel for the petitioner has failed to draw similarity between the facts of the referred authorities and that of the case at hand. In this view of the matter, the petitioner cannot derive any advantage to his contention from the referred authorities.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

04.03.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No