

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

CR No.1462 of 2020

Date of Decision: 02.03.2020

Suraj Mal (since deceased) through his LRs

.....Petitioners

versus

Jagbir Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. M. S. Rana, Advocate
for the petitioner.

AMOL RATTAN SINGH, J.

By this petition, the petitioner (through his legal representatives) challenges the order passed by the learned execution court on 14.01.2020, as also the warrant of possession issued by that court on 04.02.2020 directing the judgment debtors to put the decree holders in possession of the suit property.

Vide the former order, dated 14.01.2020, the objections filed by the petitioners have been dismissed.

The decree sought to be executed is one by which the suit property has been ordered to be partitioned, initially by way of a preliminary decree issued by the learned Civil Judge (Senior Division), Rohtak, on 21.01.2015 after which a final partition was ordered in terms thereof, vide a decree issued by that court on 31.08.2017, pursuant to an application for such partition having been made by the decree holders.

2. A perusal of the impugned order dated 14.01.2020, shows that that the contention of the petitioners-judgment debtors was to the effect that though the decree was in respect of a plot which was stated to be the suit property (as

per the petitioners), in fact the house of the petitioners was constructed upon it much prior to the filing of the suit by the decree holders, which fact they had suppressed from the court and therefore a local commissioner may be appointed for determining that factual position.

The respondent decree holders on the other hand contested the objections by submitting that no appeal, either challenging the preliminary decree or the final decree, had been filed by the judgement debtors and therefore they could not take any new plea at the stage of execution.

The decree holders in fact stated that to try and defeat the execution proceedings, the petitioners (JD nos.3(i) to 3(vi)) had constructed a boundary wall over the suit property which therefore was illegal and would also be subject matter of the partition proceedings, with the decree holders further alleging that the present petitioners forcibly took possession of the suit property after the filing of the suit and that therefore they cannot take benefit of their “illegal act”.

It was next stated by the decree holders that the parties to the partition were co-sharers in the suit property and possession of one co-sharer would be deemed to be possession of all co-sharers.

3. A perusal of the reply to the objections (copy Annexure P-8) also shows that decree holder no.3 was in the Army and therefore used to remain mostly out of the village, with the petitioners therefore having taken advantage of that situation. Political influence used by the petitioners was also alleged in the reply filed by the respondent-decree holders.

4. The learned execution court, after noticing the fact that the preliminary decree was passed on 21.01.2015, further observed that thereafter an application for a final decree was filed, seeking actual partition of the suit

property, with specific possession of the share of the decree holders in the suit property also sought after partition thereof by metes and bounds.

It was also observed that objections filed by the petitioners were not accepted vide an order passed on 21.08.2017 (seemingly those objections being against the application seeking partition by metes and bounds, with that order however not having been annexed with the present petition by the petitioners).

The impugned order further goes on to state that vide the said order dated 21.08.2017, the objections of the petitioners were not accepted and a final decree was directed to be drawn up in accordance with the mode of partition filed by the respondent-plaintiffs, with the site plan also made part of the final decree issued.

Hence, the order eventually goes on to effectively hold that with the matter having been duly contested at the time when the application seeking a final partition was filed, the petitioner-judgment debtors were not entitled to now challenge the partition on any other ground, that decree having become final.

5. Before this court, learned counsel for the petitioner first submitted that the execution court had wholly erred in not framing any issues before dismissing the objections and on that ground alone the impugned order deserves to be set aside.

He next submitted that the suit property being one that has been constructed upon, the decree cannot be executed.

He also referred to sub-section (1) of Section 47 of the Code of Civil Procedure, 1908, to submit that even in terms thereof, since a separate suit cannot be filed, all questions arising between the parties at the time of

execution of the decree, have to be determined by the execution court and consequently, issues were necessarily required to be framed by that court.

He has also relied upon various judgments, one of the Supreme Court, one of a co-ordinate Bench of the Bombay High Court and four of co-ordinate Benches of this court, to try and support his aforesaid contention. The said judgments are enumerated hereinbelow:-

- 1) **M/s. TCI Fnance Ltd. v. Calcutta Medical Centre Ltd. and another** 2005(4) RCR (Civil) 347;
- 2) **Pramod Kedarnath Gandhi and etc. v. Dilip Shankarrao Junghare and another etc.** 2005 (4) ICC 97;
- 3) **Satish Kumar v. Jagdish Chander** 2019 (1) PLR 706;
- 4) **M/s Woolways Shop v. Central Bank of India and others** 1989 (2) PLR 559;
- 5) **Renu Kundra v. Surjit Singh and another** 2018 (1) Law Herald 366; and
- 6) **Punjab National Bank v. Rajesh Kumar Jain** 1992 (2) LJR 673.

6. A perusal of all those judgments however shows that in none of them has it been laid down that formal issues must necessarily be framed by the execution court before deciding an execution application.

Section 47 of the CPC reads as follows:-

“47. Questions to be determined by the Court executing decree.--(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of

property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

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Though counsel for the petitioners has not pointed to that, it is also necessary to refer to Rule 23 of Order 21 of the Schedule to the Code, which reads as follows:-

“23. **Procedure after issue of notice.**--(1) Where the person to whom notice is issued under [rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.”

7. Thus, what Section 47 enjoins upon the execution court to do is that it shall decide all questions arising, between the parties to the suit or their representatives, in relation to the execution, discharge or satisfaction of the decree issued, by way of the said proceedings themselves and not by way of a separate suit.

Consequently, very obviously the said provision does not make it mandatory that formal issues must be framed by the execution court before deciding an execution application, or the objections filed thereto.

Sub-rule (2) of Rule 23 of Order 21 of the CPC stipulates that when objections to the execution of a decree have been filed, the court would consider such objections and make such order as it thinks fit.

Again obviously, the formal framing of issues is not made mandatory in such proceedings.

In this context even Rules 99 and 101 of Order 21 of the Schedule to the Code can be referred to, which read as follows:-

“[99. **Dispossession by decree-holder or purchaser.--** (1)

Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

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[101. **Question to be determined.--** All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.]”

Thus, in fact Rule 99 is applicable where any person other than a judgment debtor is dispossessed of immovable property by the holder of a decree (obviously after such dispossession), with Rule 97 (not reproduced hereinabove) being one which permits a holder of a decree or a purchaser of any property sold in execution of a decree to move an application to the court, if he/she is obstructed by any person from obtaining any possession of such property.

In either case, the questions that are to be determined by the execution court, are those specified in Rule 101 of Order 21.

Even that provision does not actually make it mandatory that issues must be framed by the execution court even in the case of a 3rd party objecting to execution of a decree or dispossession from the suit property, though of course, the execution court is not debarred by any specific provision, from actually framing issues if it considers necessary.

In fact, even in one of the judgments cited by learned counsel for the petitioners, it has been specifically held that the executing court is not enjoined by the statute to frame issues and dispose of the same in the same manner as in a suit, but that the court is under an obligation to decide the dispute in a judicious manner (reference M/s Woolways Shop (supra)).

8. Coming to the present case, it naturally could not be denied by learned counsel for the petitioners that in fact though at the time that the preliminary decree passed, the petitioners and their co-defendants were proceeded against *ex parte*, however, when the application for passing of a final decree was filed, they had filed a written statement in reply to that application, upon considering which the civil court still passed a final decree on the suggested mode of partition as given by the respondent-plaintiffs, with the site plan submitted by the decree-holders also having been accepted by that court and made a part of the decree dated August 21, 2017.

On specific query, learned counsel for the petitioners has not denied that, so far at least, no order has been passed by any competent court in any appeal filed by the petitioners, staying operation of either of the aforesaid judgment and decrees.

It is however necessary to notice that though learned counsel for the petitioner submitted that an appeal was filed against the aforesaid decrees, he has not been able to provide any particulars thereof, with, naturally, no

interim order therefore passed in any such appeal having been shown to this court.

Thus, in such a situation, where the petitioners allowed the preliminary decree (passed *ex parte* against them and their co-defendants), as also the final decree passed to become final, specifically in the presence of their counsel, with a written statement also filed by them in reply to the application seeking a final decree of partition, the execution court, in my opinion too, could not have gone beyond the decrees passed by the civil court.

9. Learned counsel for the petitioners has also pointed to photocopies of some photographs annexed with this petition, to try and show that a house is existing on the suit property.

That aspect is not being gone into in detail by this court, in view of the fact that, admittedly, their own stand in the written statement filed by them in reply to the application for a final decree, was that the said house was constructed pursuant to a family settlement which was acted upon. However, very obviously, they neither chose to bring the family settlement to the knowledge of the civil court that passed the preliminary decree on 21.01.2015 (they having been proceeded against *ex parte*), nor chose to challenge the final decree passed after their written statement was considered by the court seized of the application of the respondent-decree holders seeking a final partition by metes and bounds.

Of course, had either of those decrees been challenged with any success, naturally the whole matter would have been different. However, the petitioners only now having chosen to challenge the impugned orders passed by the execution court, that court had no choice but to reject such challenge in the aforesaid circumstances, it not being empowered to go beyond the decrees

issued.

It is to be specifically noticed again at this stage that the petitioners are not 3rd parties to the decrees but legal heirs of one of the judgment debtors with they themselves (as the LRs), who had filed a written statement before the civil court in reply to the application seeking a final decree.

10. Consequently, I see no reason, in the aforesaid circumstances, for the execution court to have mandatorily been required to frame issues before allowing the execution application of the respondent decree holders, because any plea with regard to any family settlement entered into between the parties consequent upon which any construction was made on the suit property, was required to be taken at the time when the civil suit was under consideration, and if the petitioner-judgment debtors were aggrieved of any order passed despite such family settlement having been brought to the notice of that court, they were required to challenge it in appropriate proceedings by way of an appeal.

It is also necessary to say here that the preliminary decree does refer to the suit property as a plot and the decree of partition would obviously be taken to be in the context of a plot; yet, the petitioners' contention of a house having been constructed thereupon pursuant to a family settlement, not having been entertained by the court passing the final decree, and the petitioners having chosen not to challenge that decree, the execution court was bound to honour that decree, and no separate issues, in my opinion, were required to be framed by it in that context, with the petitioners themselves being the LRs of the judgment debtor, they having also filed a reply to the application for the final decree and with them already having accepted the decrees issued, without

a challenge thereto.

12. Hence, in my opinion, they, as judgment debtors, cannot be allowed to raise that plea before the execution court which, to repeat, naturally cannot go beyond the decree passed by the competent court.

13. It may also be noticed here that the suit is shown to have been instituted by the respondent decree holders against four persons, including Suraj Mal, i.e. the husband of LR no.1(i) and the father of the remaining five petitioners before this court.

However, the other three defendants in the suit were proceeded against *ex parte* before the trial court in proceedings that led to the preliminary decree (as also were present petitioners), with the other defendants also having been proceeded against *ex parte* in the proceedings that led to the final decree, though the petitioners were very much represented in those proceeding, as already noticed.

14. Consequently, finding no ground to interfere with the order of the learned execution court, this petition is dismissed *in limine*.

March 02, 2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.