

Singh have settled the matter between them and land is to be mortgaged in favour of Ajaib Singh. As Harpinder Singh does not have any unencumbered land, therefore Sukhwinder Singh elder brother of Harpinder Singh has executed agreement of Rs. 1,21,000/- out of joint land and registry would be executed on 7.8.2009 and all expenses on registry will be borne by Harpinder Singh. If I back out from agreement then I will not file execution application and will give statement in favour of Harpinder Singh. I will get mortgage deed executed in favour of my wife Jasbir Kaur. The period of this mortgage will be 5 years. Registry of area measuring (6-18) will be executed in favour of my wife. That now Ajaib Singh will have no connection with the land of Harpinder Singh. The orders passed by the Court for execution of sale deed has been settled with Harpinder Singh. I will not file any execution further and Jasbir Kaur will have no right of possession over this mortgaged land. I have full right to cancel the registry. I will not pay any amount to Sukhwinder Singh at the time of registry. This registry is executed in lieu of liability of Harpinder Singh. If Ajaib Singh back out then Rs. 1,21,000/- will not be refunded to him. If Sukhwinder Singh refuse to execute registry then I shall be liable to take double amount. The Court case has been decided on dated 21.4.2009. This agreement can be enforced through Court as well. The registry which I have executed in favour of my wife then I will return the agreement at the time of Registry. That I will not file any execution, we have settled out dispute. I will not get mortgage deed executed in favour of my wife from Sukhwinder Singh who is brother of Harpinder Singh. Both parties will have no right. The agreement has been reduced into writing so that it can be used as evidence.”

2. Moreover, the mortgage deed following the agreement does not appear to bear the signatures of the decree-holder, while it talks about the same property. The property stands registered in the name of the plaintiff since 2015 in terms of the decree.

3. The defendant's objections in execution have been dismissed by

the order of Civil Judge, (Senior Division), Gurdaspur dated 17.1.2020. The learned Judge has found no substance in the objection asking that the execution proceedings be dismissed in the light of compromise Ex. O1 (agreement) and mortgage deed Ex. O2 alleged to be executed by the decree-holder. The judge culled out the basic dates dependable to the conclusion. These were to recapitulate: The suit for possession by way of specific performance of agreement of sale dated 24.12.2002 was decreed on 20.2.2008. The execution of mortgage deed is admitted by the decree-holder but has been explained that it relates to some other independent transaction between the wife of the decree holder and Sukhwinder Singh and has no concern with the execution in question. The execution of compromise deed Ex.O1 is completely denied. On these premises, the executing Judge is correct in his reasoning that where the suit of the plaintiffs decreed was for possession, one fails to understand as to how the compromise was effected qua the execution of mortgage deed Ex. O2. Even though OW2 Sukhwinder Singh has deposed that he executed mortgage deed Ex. O2 in favour of the wife of the decree holder on behalf of his brother/objector Harpinder Singh in order to satisfy the claim of execution but this averment in his examination-in-chief is not in consonance with recital in the mortgage deed Ex. O2.

4. Accordingly, the trial Court dismissed the application by assigning the following reasons:

“There is no recital in Ex. O2 regarding the fact that Sukhwinder Singh was executing mortgage deed to satisfy the claim of the DH in the present execution. After going through the entire body of document, there is no iota of inclination of parties to the document that

same was being executed qua the alleged compromise effected vide document Ex. O0. Even as per recital in Ex. O2, it transpires that mortgage consideration was already taken by Sukhwinder Singh at his house. Moreover, Sukhwinder Singh himself has admitted that he filed an application for redemption before Id. SDM, Gurdaspur. If the mortgage deed Ex. O2 was executed qua settlement of claim in the present execution, one fails to understand as to why application for redemption of mortgage was filed by Sukhwinder Singh. He has further admitted that application was withdrawn as he failed to pay the amount for redemption. Even deed writer has not supported by the claim of JD in his examination. The fact that he affixed his stamp in Punjabi and signed in English on document Ex. O4 to Ex. O6 has not relevancy as the witness has clearly denied his signatures on document Ex. O1. The fact that Jasbir Kaur has not been examined has no relevancy as it is settled principle of law that the fact is liable to be proved by party who alleges the same. It was for the JD to have proved averments put forth in the objections and has to stand on his own legs.”

5. The judgment-debtor should not have taken the risk of warding off a decree by an out of court settlement by a doubtful document. This fatal mistake has to be to his peril. Therefore, I find no person of reasonable intelligence would accept such a defence against the decree which appears to have been made somehow to get out of the sale transaction. Anyway, the property has been transferred five years ago in favour of the decree holder plaintiff against the defendant JD and thus is now too late to wake him up by a knock from the Court.

6. Accordingly, I find no cogent or valid ground to interfere with the well reasoned order of the civil judge as it does not suffer from any legal infirmity or error of jurisdiction or want of legal reasoning assigned to dismiss the objections on the basis of Ex O1 & Ex O-2, the so called

agreement and mortgage deed even after the suit property stands transferred in the name of the plaintiff decree holder in 2015.

7. As a result of the discussion, the impugned order is upheld and the petition is dismissed in *limine*.

(RAJIV NARAIN RAINA)
JUDGE

2.3.2020

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Whether speaking/reasoned : Yes
Whether reportable : Yes/No