

ESA No.18 of 2020 (O&M)

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

ESA No.18 of 2020 (O&M)  
Date of Decision: 27.07.2020

Raj Rani Pawar  
...Appellant

Versus

Lehmber Singh and others  
....Respondents

ESA No.19 of 2020 (O&M)

Raj Rani Pawar  
...Appellant

Versus

Gurdev Singh and others  
....Respondents

ESA No.20 of 2020 (O&M)

Raj Rani Pawar  
...Appellant

Versus

Naseeb Kaur and others  
....Respondents

ESA No.21 of 2020 (O&M)

Raj Rani Pawar  
...Appellant

Versus

Hardev Singh and others  
....Respondents

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**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present:- Mr. Ashwani Talwar, Advocate, for the appellant(s).

**RAMENDRA JAIN, J. (ORAL)**

Case has been taken up for hearing through video conferencing due to pandemic Covid-19.

By this common order, I shall dispose of above-titled four ESAs.

For brevity sake, facts are being taken from ESA No.18 of 2020 titled "Raj Rani Pawar v. Lehmber Singh and others".

Through this second appeal, third party objector has laid challenge to order dated 24.01.2020 of the Executing Court and order dated 06.03.2020 of the Appellate Court, dismissing her objections.

Briefly, decree-holder-respondent No.1 filed a suit for recovery of ₹20,00,000/- against respondent No.3, husband of the appellant, being director of respondent No.2, paid by him by way of fixed deposits on his promise to return the same along with interest @ 13% per annum.

In the said suit, *ex parte* judgment and decree dated 15.09.2017 (Annexure A-1) was passed against respondent No.3. Since, *ex parte* judgment and decree was never challenged either by husband of the appellant or anyone else, therefore, same attained finality.

Pursuant to aforesaid judgment and decree, respondent No.1 filed execution petition, in which the appellant appellant filed third party objections claiming herself to be owner in possession of the attached property on the basis of registered transfer deed dated 01.03.2013 allegedly executed in her favour by her husband respondent No.3-judgment debtor.

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Executing Court after hearing the parties, dismissed third party objections of the appellant vide order dated 24.01.2020.

Being aggrieved, appellant approached the First Appellate Court, who also, finding no merit in the alleged grouse of the appellant dismissed her first appeal vide judgment dated 06.03.2020.

Learned counsel *inter alia* contends that both the impugned orders being illegal are liable to be set aside, inasmuch as in view of provision of Order 21 Rule 58 of the Code of Civil Procedure and that registered transfer deed in favour of the appellant is prior to passing of the judgment and decree for which execution has been filed by respondent No.1, the executing Court was required to frame issues and take evidence. Thus, both the Courts below have erred in not adopting any such exercise and not giving due weight to registered transfer deed in favour of the appellant.

Having given thoughtful consideration to the above submissions, this Court finds the instant appeals completely devoid of any merit for the reasons to follow.

By this time it is well-settled that third party objector can only be heard after his/her delivery of possession of the subjected/attached property. In the instant case, appellant is still claiming her possession over the attached property. Therefore, her objections were not maintainable. Despite that both the Courts below have dealt with her objections in detail.

Relevant portions of the order of Executing Court are reproduced hereunder for convenience and ready reference: -

“3. x x x A careful perusal of this

*transfer deed reveals that it has been executed by JD through his daughter being his general power of attorney vide deed of general power of attorney bearing no.5327 dated 24.12.2012 in respect of the land which has been put to public auction, in favour of his wife Raj Rani Pawar. A recital has been made in the transfer deed to the effect that the possession of the land has been given to Raj Rani Pawar in whose favour the transfer deed has been executed by JD Malwinder Singh. The objector has also attached the photostat copy of the alleged general power of attorney dated 15.01.2013 executed by objector Raj Rani Pawar along with her husband JD Malwinder Singh in favour of Manjeet Kaur, the sister of JD. Perusal of this general power of attorney dated 15.01.2013 that it has been executed in London and both the objector and JD Malwinder Singh are stated to be the residents of the same address in London.*

4.    *x       x       x       On the other hand, the learned counsel for DH has argued that the alleged transfer deed dated 01.03.2013 is a manipulated document prepared by the JD in connivance with his wife i.e. objector Raj Rani Pawar and daughter Puneet Kaur Pawar only to defeat the legal rights of the DH as he was well aware at the time of issuance of the alleged fixed deposit receipts in the year 2009 after receiving ₹ 10 lakhs from the DH that he has committed fraud and DH in future must initiate legal action against him and in that contemplation he has cleverly disposed off his land in favour of his wife/objector Raj Rani and himself fled to abroad. After hearing the contentions raised by counsel for both the DH and objector, I agree with the submissions made by the learned counsel for the DH.*

*Admittedly, the objector is none else, but wife of JD Malwinder Singh and she filed the present objection through her alleged general power of attorney Manjit Kaur who is the real sister of JD Malwinder Singh. It has also come on record that the JD has executed the transfer deed dated 01.03.2003 in respect of land under auction in favour of his wife through his daughter being his general power of attorney.*

5. *So, all this sequence of the events goes to show that the JD in connivance with his family members had executed the transfer deed 01.03.2013 with ulterior motive to keep his property out of the reach of execution proceedings. As rightly argued by the learned counsel for DH, the JD was aware of the fact at the time of issuance of fixed deposit receipts to the DH after receiving the amount of ₹ 12 lakh that he would initiate legal action against him on the non-payment of said amount by him. So, in contemplation of the legal action which might have been initiated against him by the DH in future, he has transferred his land in favour of his wife vide transfer deed dated 01.03.2013 through her daughter being his general power of attorney on the basis of alleged power of attorney dated 24.12.2012. It is also important to mention here that the other execution applications of similar nature by the decree holders of the same village to which the DH and JD of the present execution application belong are also pending for today itself under the titled “Naseeb Kaur vs. New Look Finvest Pvt. Ltd. bearing Exe-117-2018”, “Gurdev Singh vs. New Look Finvest Pvt. Ltd. bearing Exe-120-2018” and “Hardev Singh vs. New Look Finvest Pvt. Ltd. bearing Exe-119-2018”. All these execution applications are in respect of different exparte money*

*decrees passed against the JD and similar objections have been filed by his wife Raj Rani Pawar on the basis of transfer deed dated 01.03.2013. The DH has also pleaded that a criminal case has already been registered against the JD for the fraud committed by him upon the residents of village Mithapur and he has already been declared proclaimed offender. This fact stated in reply by DH has not been denied by the objector, who is none else but his wife and is residing along with him in England as reflected from the general power of attorney dated 15.01.2013 given by both of them in favour of Manjit Kaur. The malafide intention of the JD is also evident from the fact that he is at present residing in England along with his wife after disposing off his entire property and thereby leaving the DH helpless to recover the decretal amount from him either against his person by proceeding under Order 21 Rule 37 to 40 CPC and by getting his property attached and sold through the process of court. Therefore, the transfer deed dated 01.03.2013 though executed before the institution of the suit wherein the decree in question dated 15.09.2017 has been passed is liable to be ignored. This transfer deed dated 01.03.2013 also came under the suspicion on account of two other reasons, firstly no mutation has been got sanctioned by the objector in her favour till date though the transaction has taken place in the year 2013 and JD is still reflected as owner-in-possession of the land in question despite the fact that the recital has been made in the transfer deed to the effect that the possession has been delivered to the objector. x*

*x x x x x x. In this case, the legality and validity of transfer deed dated 01.03.2013 has come under the suspicion not only on the ground of*

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*non-sanctioning of mutation in favour of objector Raj Rani Pawar, but also on account of other reasons as already discussed above. On the other hand, learned counsel for the DH has relied upon the judgment of Hon'ble Punjab & Haryana High Court, given in the case titled as Surinder Singh and others vs. Omwati and others, 2005(3) RCR (Civil) 786. In this case, it has been held that if a collusive decree has been suffered to alienate the property in comprehension of and to avoid liability under another prospective decree going to be passed against the owner of the property, such decree has to be ignored in execution of subsequent decree. The facts of this case was similar to the case in hand as in that case also the predecessor in interest of JD had suffered a decree in favour of JD on 04.01.1992 whereas the claim petition has been filed by the DH/respondent on 29.01.1992. As such, the matter under consideration is squarely covered by this judgment cited by the counsel for the DH. The objector has also alleged that no proper procedure has been followed before the attachment and putting the land to sale by the Court. But it has not been disclosed as to how the proper procedure has not been followed. As such, I find no merit in the objections filed by the objector Raj Rani Pawar and accordingly, the same are hereby dismissed.”*

Relevant portion of the judgment of the Appellate Court is as

under: -

*“6. But it is no more res integra that issues framing is not to be made in a mechanical manner and in appropriate case summary disposal is also permissible without framing issues, if court finds that the only purpose of objections is to delay and frustrate the*

*proceedings and objections on the face of it does not deserve that attention. Instant case seems to fall in that rare category, which does not deserve any trial. The objector whatever she claim, is not strictly a stranger to the litigation. She is wife of JD Malwinder Singh. Rights of family members of JD had to be distinguished from bonafide strangers, against whom the law may permit much liberal process. On the other hand, if JD through his family members tries to do a mischief, then the court must strike against such effort with full vigor. All depends upon overall circumstances and scenario and stereotype process cannot be followed in each and every case.*

*7. In the instant case, present appellant-objector claims that property should not be sold and should rather be deattached as it stood already transferred in her name vide transfer dated 01.03.2013. It was being claimed that this transfer was much before filing of suit by the decree holder and no liability had arisen against JD by that date. The argument of respondent No.1-Decree Holder on the other hand is that it was a fraudulent transfer within the meaning of Section 53 of Transfer of Property Act 1882. Whole transfer was made by JD to objector with an intention to defeat the rights of Decree Holder and similarly placed persons. It was being submitted that objector is not a transferee in good faith or for consideration. Rather, same is a gratuitous transfer, which is not protected. It was argued that separate suit is not necessary for identifying such fraudulent transfers and can be determined so in such like objections.*

*8. In the opinion of this court, arguments raised by respondent No.1- Decree Holder seems attractive. Objector in the present case is none, but wife of JD*

*Malwinder Singh. Objections of such family members needs to be scrutinized with circumspection, otherwise whole process of law can be abused and misused. Before a fair and elaborate trial is being demanded, appellant herself should also fall in that category. What disturbed this court is that JD want to avoid all his liabilities, sitting in U.K. He suffered the liabilities much before the transfer made to the objector in the year 2013. Objector has not paid anything to JD for the transfer. Alleged transfer deed dated 01.03.2013 is a gratuitous transfer. It will not be out of place that as observed by the learned Executing Court, transfer deed is being executed on the basis of general power of attorney. Raj Rani Pawar beneficiary of transfer deed is residing at the same address, which is address of JD Malwinder Singh. If that is the fact, certainly the transaction can be anything, but a bonafide transaction. It may settle the right between husband and wife inter-se in case of dispute, but cannot be used as a shield to avoid the liabilities towards strangers to the family like Decree Holder. Infact, the transaction between Malwinder Singh and JD through attorney in favour of appellant-objector is nothing, but a text book example of fraudulent transfer within the meaning of Section 53 of Transfer of Property Act. This court agree with the contention of Decree Holder that a separate suit for such findings are not needed and such findings are possible even in execution proceedings and objections depending upon material available. In the transfer deed, objector is claiming to be in possession, but no material was there that she is in possession. If objections of such nature are allowed to be sustained, then Decree Holders in each case shall lose faith in legal system. The courts are not here to provide empty and*

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*shallow decrees and cannot act as mute spectator. Veil tried to be created by objector must be lifted to understand the real transaction.*

*9. It shall not be out of place to mention that even mutation was not got sanctioned by objector. No doubt, mutations in itself are no proof of ownership, but it is in the context that after obtaining the transfer deed from family members, papers were kept at home without any possession and effort to demonstrate the world what actually transpired. It seems to be nothing but a clever device propounded just for using the same at appropriate stage. Learned Executing Court has not dealt specifically with Section 53 of Transfer of Property Act, though has broadly decided the things within those principles. This appellate court is empowered to fill those blanks and can specifically hold that objections of objector Raj Rani Pawar cannot be allowed to sustain as she obtained a fraudulent transfer in her favour, within the meaning of section 53 of transfer of property act, which cannot bind the Decree Holder. Separate suit was certainly not needed.”*

After going through above observation and findings, this Court finds that both the impugned orders are well-reasoned and legal. Therefore, no interference is called for.

Dismissed.

**July 27, 2020**  
R.S.

**(RAMENDRA JAIN)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No