

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

**Execution Second Appeal No.168 of 2018 (O&M)
Date of Decision: 03.03.2020**

Rajinder Kaur

.....Appellant

Versus

Balbir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

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

MAHABIR SINGH SINDHU, J. (ORAL)

Present execution second appeal (ESA) has been filed against the impugned judgment dated 14.02.2018, passed by learned Additional District Judge, affirming the order dated 14.11.2017 of learned Civil Judge (Junior Division), Patiala, whereby third party objections of the appellant were rejected.

It is contended by learned Counsel for the appellant that no doubt, there is a decree dated 29.10.2010 in favour of respondent No.1-Balbir Singh (decree holder/plaintiff), but that is a result of fraud and collusion with respondent/JD No.2/defendant No.1-Surjit Kaur @ Doctarni as the property in question had been exchanged in many hands right from 21.02.2006, thus, both the Courts have committed grave error of law while rejecting the objections.

Heard learned Counsel for the appellant and perused the paper-book.

It transpires that civil suit for possession of Plot No.38, measuring 4 Biswas i.e. 200 sq. yds., as described in the plaint, was filed on 21.01.2006 by

the decree holder-Balbir Singh against respondent Nos.2 to 4 (defendants/judgment debtors). Respondent No.2/judgment debtor-Surjit Kaur contested the suit, but respondent Nos.3 and 4, namely, Avtar Singh and Rajpal Kaur, were proceeded *ex parte* on 18.05.2006 and 28.07.2006, respectively. Ultimately, the suit was decreed by learned Civil Judge (Jr. Divn.), Patiala, vide judgment and decree dated 29.10.2010. Thereafter, execution proceedings were initiated by the decree holder/respondent No.1 and present appellant-Rajinder Kaur filed objections under Order 21 Rule 97 of the Code of Civil Procedure, claiming to be the *bona fide* purchaser of the property in dispute on the basis of Sale Deed dated 25.11.2011.

Precisely, two fold objections were raised viz:-

- (i) *that decree holder obtained the decree in question in collusion with J.D./respondent No.2;*
- (ii) *that property in dispute was not properly demarcated.*

Objection petition was opposed by the decree holder by filing reply and on the basis of pleadings of both the parties, the following issues were framed:-

1. *Whether the property of the Decree Holder is situated in Khasra No.576? OO*
2. *Whether the property was not properly demarcated? OO*
3. *Whether the objector is bonafide purchaser? OO*
4. *Relief.*

After taking into consideration the material available on record, learned Executing Court came to the conclusion that decree was passed on 29.10.2010, whereas the appellant/objector purchased the suit property by way of registered Sale Deed dated 25.11.2011 (Ex.O8), therefore, while applying the principle of *lis pendens* rejected the plea of *bona fide* purchaser.

Learned Executing Court also considered the second point regarding the identification of the property and after relying upon the report of Local Commissioner dated 27.03.2008 (Ex.P-9) observed that suit property had been properly demarcated by the Revenue Officer during trial after inspection on the spot, which clearly indicates that house in dispute is in possession of Surjit Kaur (defendant No.1/respondent No.2/JD), situated in Plot No.38. Learned Executing Court further observed that since neither objections were filed against the report of the Local Commissioner; nor any appeal has been preferred against the judgment and decree dated 29.10.2010, therefore, concluded that report of Local Commissioner cannot be challenged in the execution proceedings and ultimately, rejected the objections, vide order dated 14.11.2017.

Aggrieved against the above order, an appeal was preferred while repeating the similar pleas, as raised before learned Executing Court, but were rejected by learned lower Appellate Court.

Learned lower Appellate Court also minutely considered the submissions made on behalf of the appellant, but did not find favour while concurring with the Executing Court and dismissed the appeal, vide judgment dated 14.02.2018.

Hence, the present second appeal against the orders of both the Courts below.

Concededly, the suit for possession was filed by the decree holder on 21.01.2006, which was contested by defendant/respondent/JD No.2 while raising the pleas that her husband-Dalbara Singh purchased the plot in question from one Mohan Lal, vide Sale Deed dated 02.08.2002, on the basis of which, a mutation was sanctioned and after raising the loan, he got constructed the house

and since then, they are residing in this very house.

On the other hand, the case of the plaintiff/decreed holder is that her mother, namely, Satwant Kaur purchased the plot in dispute by way of Sale Deed dated 31.07.1990 from one Onkar Nath Gupta and mutation was duly sanctioned. Thereafter, his mother expired on 18.09.1990 and the plot in question remained vacant, but in the month of December, 2005, when father of the plaintiff visited on the spot, he came to know that defendants/JDs/respondent Nos.2 to 4 have constructed a house on the plot in question and claimed that same was purchased by their predecessor-in-interest (Dalbara Singh) from one Mohan Lal, vide Sale Deed dated 02.08.2002.

After contest at the instance of judgment debtor/defendant No.1/respondent No.2, the suit was decreed by learned trial Court, vide judgment and decree dated 29.10.2010 and undisputedly, the same has attained finality.

As per the case of the appellant, original owner of the plot in dispute was one Maya Kaur, who sold the same to one Sarup Singh, vide Sale Deed dated 20.06.1984. Sarup Singh further sold it to Mohan Lal and from whom, Dalbara Singh purchased by way of Sale Deed dated 02.08.2002. Thereafter, Surjit Kaur being the legal heir of said Dalbara Singh sold it to Ravinder Singh and from whom, the plot was purchased by one Baljit Kaur. Subsequently, appellant-Rajinder Kaur purchased the property in dispute on 25.11.2011 (Ex.O8) from said Baljit Kaur.

Concededly, appellant/objector purchased the property in dispute only on 25.11.2011 i.e. after passing of the decree in question and thus, she falls in the category of successor-in-interest of Surjit Kaur and a complete chain is

made out from all the Sale Deeds i.e. Surjit Kaur to Ravinder Singh; then Baljit Kaur and ultimately, by the appellant. The plea of Surjit Kaur being legal heir of Dalbara Singh had already been rejected by the learned trial Court while passing the impugned judgment and decree dated 29.10.2010, which has attained finality and thus, the appellant/objector cannot claim a better title than her vendor.

Thus, the point raised on behalf of the appellant that decree dated 29.10.2010 in favour of respondent No.1 (decree holder/plaintiff) was result of fraud and collusion with respondent No.2/defendant No.1 is without any basis and liable to be rejected. Similarly, the exchange of property in various hands w.e.f. 21.02.2006 would not invalidate the judgment and decree dated 29.10.2010 and as such, the Sale Deed dated 25.11.2011 in favour of the appellant is rightly hit by the principle of *lis pendens*.

In view of the facts and circumstances, discussed hereinabove, this Court does not find any illegality or perversity with the impugned orders, passed by both the Courts below while rejecting the objections of the appellant. Consequently, the appeal lacks merit and same is dismissed.

However, the dismissal of the objections of the appellant/objector would not be construed as a bar to take recourse to the legal remedies available under law against her vendor, if so advised.

March 03, 2020

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>