

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

ESA-16-2021(O&M)

Date of decision:-12.11.2021

Major Singh

...Appellant/Objector

Versus

Ranjit Singh and another

...Respondent/Decree Holders

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ferry Sofat, Advocate
for appellant.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated the facts of the case are that plaintiff Ranjit Singh had filed a suit against defendant Ram Singh for grant of mandatory injunction directing the defendant to hand over rotary tiller 7 Ft. Orange colour (Rotavator), which had been purchased by the plaintiff from M.B. Farm Machinery (P) Ltd., Malerkotla Road village Gill, Ludhiana vide cash memo No.787 dated 8.3.2013 besides asking for grant of damages and compensation and for

permanent injunction also etc. That suit after contest was decreed vide judgment and decree dated 3.11.2017. The defendant was directed to hand over possession of rotary tiller to the plaintiff along with an amount of Rs.10,000/- as damages within one month of passing of judgment and decree and in addition the defendant was restrained from alienating the rotary tiller to any other person. The defendant had preferred an appeal against judgment and decree passed by the trial Court, which was dismissed by Additional District Judge, Sangrur on 14.8.2018. The matter came up to this Court also. However, RSA No.681 of 2019(O&M) was dismissed on 29.1.2019, in that way, the judgment and decree passed by the trial Court have become final. The plaintiff filed an execution application in the trial Court for execution of the decree, where one Major Singh son of Kehar Singh, resident of village Jagowal, Tehsil Malerkotla, District Sangrur appeared and filed objections contending that the rotary tiller is self-acquired property of objector, which was purchased by him from Sukhpal Singh son of Tehal Singh, resident of village Mubarakpur Chungan, Tehsil Malerkotla vide receipt dated 2.2.2014 and Sh.Sukhpal Singh had in fact purchased it from M.B. Farm Machinery (O) Ltd., Malerkotla Road, village Gill vide invoice No.512 dated 11.10.2013; the objector is in actual physical possession of the said object with which defendant Ram Singh has no concern, however, decree-holder plaintiff wants to obtain illegal

possession of rotary tiller, therefore, he be stopped from doing so.

2. The objections were opposed by the decree holder contending that the receipt dated 2.2.2014 set up by the objector is a forged and fabricated documents just to create false evidence in order to delay the execution of the decree. According to the plaintiff/decreed-holder defendant/JD had got the objection petition filed from objector to obstruct the handing over of rotary tiller to the plaintiff-decreed-holder in execution of the decree. Such objections were accepted by Civil Judge (Jr.Divn.), Malerkotla and attachment of rotary tiller is ordered to be released vide order dated 26.8.2019.

3. Feeling aggrieved the plaintiff/decreed-holder had preferred an appeal before the Court of District Judge, Sangrur, which was assigned to Additional District Judge, Sangrur, who vide order dated 23.7.2021 had accepted the appeal, set aside the order passed by the Executing Court of Civil Judge (Jr.Divn.), Malerkotla dismissing the objections. The reasoning given by learned Additional District Judge, Sangrur while accepting the appeal is quite detailed and convincing, which for ready reference is being reproduced as under:

Thereafter the plaintiff/DH/appellant filed an execution application and warrants of possession were issued by the learned Executing Court. The warrants of possession were received back with a report that when the bailiff went to the house of JD/respondent no.2, then JD/respondent no.2 was present in his

house and when the Rotavator was about to be seized then JD/respondent no.2 said that he had given the rotavator and thereafter wife of respondent no.1./objector claimed that rotavator belonged to them and did not allow its possession to be taken and started quarreling and the warrants of possession remained unexecuted and the bailiff asked for police help. Thereafter objection petition was filed by respondent no.1/objector wherein he took a stand that the rotavator was his self acquired property, which he had purchased from Sukhpal Singh vide receipt dated 02.02.2014 and that Sukhpal Singh had purchased the same from M.B. Farm Machinery (O) Ltd. Malerkotla Road, Village Gill vide bill invoice no.512 dated 11.10.2013. The learned Executing Court accepted the objections of respondent no.1.

However the bare perusal of the file clearly shows that the objection petition was nothing but an after thought between the JD and the objector who filed the same in collusion with each other as they are real brothers, who live in the same house. The collusion between them is apparent as when the summons were issued to JD in this case to appear in the Executing Court on 16.01.2018, the summons on the address of JD were received by his brother (objector), who lived in the same house as that of JD. Furthermore when the warrants of possession were issued, they were received back with a report wherein it is recorded that the JD stated that he had given the rotavator though he does not clarify as to whom he had given the rotavator and on which date. Furthermore the bill

and receipt being relied upon by the objector were never proved before the Executing Court and they were merely photo copies and further the receipt in itself appears to be a fabricated one as no amount for which the rotavator was purportedly purchased by the objector is mentioned on the same. It is clear that JD and the objector have colluded with each other in order to defraud the DH from the fruits of his hard earned decree, for which he had to approach three Courts and remained involved in litigation since the year 2014. The learned Trial Court/Executing Court thus clearly committed a grave error in allowing the objections of objector/respondent no.1. Accordingly, the appeal is hereby allowed and the impugned order is hereby set aside and objections filed by respondent no.1 are dismissed.

4. Such judgment left the objector aggrieved and he has filed the present second appeal.

5. I have heard learned counsel for the appellant besides going through the record.

6. The impugned judgment/order passed by the learned Additional District Judge, Sangrur is quite detailed, well reasoned and does not suffer from any illegality or infirmity, whereas it is not so with regard to the order passed by learned Civil Judge (Jr.Divn.), Malerkotla, who had not gone into the matter deeply and not analyzed the legal and factual position minutely resulting in miscarriage of justice inasmuch she had allowed the objections,

which as a matter of fact deserved to be dismissed. I do not see any reason to interfere with the order passed by learned Additional District Judge, Sangrur.

7. Finding no merit in the appeal, the same stands dismissed.

12.11.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No