

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-1817 of 2014 (O&M)
Date of Order: 26.04.2022

Bachitter Singh and others

..Petitioners

Versus

Nachattar Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Harpreet Kaur Dhillon, Advocate
for the petitioners.

Mr. Navjot Singh Wahniwal, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

The learned counsel representing respondent no.1 object to the maintainability of the revision petition on the ground that an appeal is maintainable.

This revision petition is pending in this Court for the last 8 years. The limitation for filing the appeal has already gone. The revision petition was entertained and it remained pending for quite some time. For the first time, respondent no.1 objected to the maintainability of the revision petition on 01.11.2021. Thereafter, due to surge in the COVID-19 cases, leading to restrained working and functioning of the Courts, the matter was not taken up.

Keeping in view the aforesaid facts, the revision petition is treated as an appeal and this Court proceeds to decide the case as First Appellate Court.

The objection petition filed by Bachittar Singh and others has

been dismissed by the Executing Court on the ground that their objections under Section 47 CPC are not maintainable as they were not parties to the litigation. There is a decree passed in favour of Nachattar Singh and against Avtar Singh for possession by way of specific performance of the agreement to sell. Nachhatar Singh has filed the execution petition which is pending. In the meantime, Bachittar Singh etc. filed a suit for declaration that they are the owners in possession of the property(Execution whereof is sought for). In the aforesaid judgment and decree, Nachhatar Singh and Avtar Singh, both were parties. After trial, the Civil Judge (Jr. Division), Moga, vide judgment dated 04.12.2018 has held that in fact Bachittar Singh etc. are owners in possession of the property and consequentially Avtar Singh was not the owner.

In the facts of the case, it is evident that the Executing Court has taken a very myopic view of the matter. Even if the objection petition was not maintainable under Section 47 CPC, the Court could treat the same under Order 21 Rule 97 to Rule 99 CPC. The objection should not have been dismissed merely because it was filed while referring to a wrong provision of law. Now, in view of the judgment passed by the Civil Court, it is evident that the decree for possession passed in favour of Nachhatar Singh and against Avtar Singh does not affect the rights of Bachhitar Singh and others because Avtar Singh was never the owner of the property. A decree by way of specific performance is only to enforce a contract between the parties and such decree is classified as a decree in personam. Such being the position, the Executing Court should have taken a holistic view of the matter.

Keeping in view the aforesaid facts, the order 16.12.2013

(Annexure P-5) is set aside.

The revision petition stands disposed of.

The matter is remitted back to the Executing Court to decide the objections on merits.

Needless to observe that the observations made by this Court while deciding the revision petition shall not be construed as expression of final opinion on the merits of the case.

The parties through their counsels are directed to appear before the Executing Court on 16.05.2022.

All the pending miscellaneous applications, if any, are also disposed of.

April 26, 2022

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(ANIL KSHETARPAL)
JUDGE

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