IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.674 of 2014

Date of decision: 11th March, 2022

Sita Ram

… Petitioner

Versus

Devi Singh

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

Mr. Naresh Kumar, Advocate for the respondent.

FATEH DEEP SINGH, J.

Present matter revolves around an application under Order XXXIX Rule 2A read with Section 151 CPC by Sita Ram (now revisionist) against Devi Singh and others (now respondent) in all numbering six, for initiation of contempt proceedings for allegations of violation of order dated 14.11.2008 in a civil suit bearing No.248 of 2007 titled 'Sita Ram & others vs. Manga & others' (in short, 'the suit').

Upon hearing Mr. Rajesh Bansal, Advocate for the petitioner; Mr. Naresh Kumar, Advocate for the respondent and perusal of the records.

In the said civil suit, an interim stay application was moved and vide order dated 14.11.2008 defendants No.2 to 5 therein were restrained from alienating the suit land till the decision of the suit. The primary claim is that in spite of the stay order being in operation on

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20.11.2008 respondents No.1 and 2 executed registered sale deed bearing No.2189 dated 17.12.2008 in respect of the suit land who in spite of having been informed of the stay, went ahead with the execution of the sale deed and so the allegations. The then respondents No.2 and 3 had died leaving the others to face the prosecution for this contempt and who in their plea have denied having any knowledge of the order. The Court below framed the following issues:-

1. Whether the respondent has violated order dated 14.11.2008, as alleged? OPA
2. Whether the application is not maintainable? OPR
3. Relief.

The applicant testified as AW1 and proved documents Ex.A1 to Ex.A9 while respondent examined Registration Clerk Joginder Rathee as RW1 and Raj Kumar Bhoria Tehsildar-cum-Sub Registrar as RW2 and proved into evidence documents Ex.R1 to Ex.R13. It is by orders dated 12.11.2012 the trial Court had passed the following order:-

> *"In terms of issue No.1, it is held that the respondent No.1 is liable to be detained in civil prison for a term of three months. The application is partly allowed with costs. Arrest warrants be issued for his presence and committal to civil prison, in a separate file. Petition stands partly allowed, with costs. Memo of costs be prepared and the present file be consigned to record-room, after due compliance."*

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Upon appeal by Devi Lal and others, the Court of learned Addl. District Judge, Panipat vide impugned findings dated 25.10.2013 set aside the order passed under Order XXXIX Rule 2A by the Court below and dismissed the application which is subject matter of present revision petition.

Going through the submissions of the two sides, though a civil suit was pending between the parties over declaration of their right, title and interest over the property, subject matter of the suit, wherein application under Order XXXIX Rule 1 and 2 read with Section 151 CPC seeking temporary injunction restraining defendants therein from alienating the land in question measuring 29 Kanals 9 Marlas was moved and the fact that Devi Singh and Sita Ram are both real brothers being sons of Manga and had inherited the estate of the deceased father Manga and the primary dispute between the siblings was over their share of the suit land who as per the earlier pleadings in the civil suit were entitled to succeed to the estate of Manga in equal shares. It is at this juncture and under this situation one of the parties Devi Singh had transferred his share of the suit land along with mother Shanti and Sunita which is precisely 2 killa numbers. It is not displaced that Manga at the time of execution of the sale deed was very much alive and had received sale consideration and the said sale deed is by Manga and it is not established on the record by any means that this alienation is of the property owned by the applicant and is out of a share to which even the alienator was entitled to get. What is highlighted in the submissions of the two sides is

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that the order dated 14.11.2008 over which the plea of contempt has been sought to be initiated is not against Manga. Against him, no stay was in operation and which order at that point of time was final one. Manga being the owner of the suit land and a party to the sale deed had each and every right to effect alienation as per his needs and desires to which none other than his children could object. The alleged sale deed is a family arrangement whereby it has been executed by Shanti wife of Manga and Sunita wife of Subhash, another son, to the extent of their share out of the joint khata which has never been partitioned and in view of the well settled principle of law is a sale of their share out of joint land which can be taken and considered at the time of partition. The claim of the applicant is not free from another twist as PW1 he admits in his cross-examination having sold 4 Kanals of this land which was owned by his father and thus, Mr. Rajesh Bansal, Advocate representing the petitioner could not state how there is intentional disobedience of the injunction orders of a Court and the subject matter of rights of the parties after inheritance and partition is yet to be determined and it could not be said that the contemnors have sold the property to defeat the right of the applicant. There is nothing suggestive on the record to show as to the claim being made by the applicant in the application and the learned Additional District Judge has gone in detail to the very stands of the parties appreciating the evidence, oral as well as documentary, and rightly drawn the conclusion holding that the jurisprudential concept and

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purpose of Order XXXIX Rule 2A CPC is not punitive to impose penalty for default but to implement interlocutory order.

Since there is no loss and injury which has come across to any party before this Court or could be pointed out during the course of arguments, there appears to be no illegality or perversity in the impugned findings under challenge. Finding no merit in the present revision petition, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 11, 2022
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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