

Civil Revision No.7562-2017
Date of Decision : 21.04.2022

Sukhchain Kaur @Sukhcharan Kaur

...Petitioner

Versus

Charan Dass Saluja

...Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPALPresent : Mr.A.K.Khunger, Advocate
for the petitionerMr.S.C.Arora, Advocate
for the respondent

ANIL KSHETARPAL, J (ORAL)

This revision petition under Article 227 of the Constitution of India has been filed assailing the correctness of the order dated 05.09.2016 (Annexure P-1) passed by the Civil Judge (Senior Division), Sri Muktsar Sahib. The petitioner also prays for setting aside of order dated 06.09.2017 (Annexure P-3) passed by the Executing Court while dismissing her objection petition.

The order dated 05.09.2016 reads as under:

“Perusal of file reveals that the JD No.2 Surjit Singh has filed an application for recalling the sale warrants of releasing the property of JD Surjit Singh from attachment. In fact Surjit Singh had executed the sale deed in favour of his daughter in law namely Sukhcharan Kaur vide registered sale deed No.397 dated 18.11.2011 and mutation in this regard bearing No. 4411 has been incorporated in the revenue record, therefore, patently the application has not proprietary rights of the property which is attached. Therefore, he has no right to present application. It is further observed that the judgment against JDs was pronounced on 02.12.2008 and sale deed has been executed on 18.11.2011, therefore, it stands

clear that JD Surjit Singh in order to the bar the his creditors i.e present Decree Holder has executed the above said sale deed. The above said act of JD will not absolve the property so attached from the attachment and therefore the above said sale deed is illegal, null and void and hereby set aside. The revenue authorities are further directed to attach the above said property of JD Surjit Singh as so ownership of Surjit Singh prior to above said sale deed and then sell it through the public auction as per following schedule:

Notice to court spot:- 19.09.2016

Notice to court house:- 04.10.2016

Sale:- 20.10.2016

Report:- 02.11.2016”

Some facts are required to be noticed.

A decree for recovery of more than Rs.16 lakhs was passed against Surjit Singh s/o Kapoor Singh, Baltej Singh son of Surjit Singh and Jaspreet Singh son of Baltej Singh. Admittedly, the decree was for a separate amount against each judgment debtor. Surjit Singh was held liable to pay a sum of Rs.9800/- along with the interest which ultimately came to Rs.16,415/-. Admittedly, Surjit Singh deposited the aforesaid decretal amount i.e. Rs.16,415/- in the Court. Thereafter, he transferred his share to the petitioner, who is daughter-in-law of Surjit Singh, vide a sale deed dated 18.11.2011. Surjit Singh filed an application for recall of the sale warrants and for release of the property of Surjit Singh from attachment. The Executing Court set aside the sale deed on the ground that the judgment debtor had sold the property in order to defeat the rights of his creditors. The court did not realize that before that date Surjit Singh has already deposited the decretal amount and decree against him was set aside. Further, the petitioner namely Sukhchain Kaur @ Sukhcharan Kaur was never heard before setting aside the sale deed dated

18.11.2011 executed by Surjit Singh in her favour. She filed an application under Section 151 read with Section 152 CPC of the Code of Civil Procedure for recall of sale warrants and setting aside the order dated 05.09.2016 claiming that Surjit Singh had already deposited the amount and the order in question was passed without hearing the petitioner. The Executing Court dismissed the application on the ground that he has no jurisdiction to recall the order.

Despite the repeated requests, learned counsel representing the parties failed to disclose the complete facts. Hence this Court is left with no choice but to decide the case on basis of the available facts.

Ex facie the order passed on 05.09.2016 is not only without hearing the owner but also bereft of reasons. The Court was not conscious of the fact that Surjit Singh has already deposited the amount and therefore the decree against him stood set aside. This observation has been made particularly in view of the fact that learned counsel representing the parties did not dispute that the decree against Surjit Singh was only to the extent of Rs.16,415/-, which was duly deposited by him.

Keeping in view the aforesaid facts, the petition is allowed. The orders dated 05.09.2016 as well as 06.09.2017 are set aside. The Executing Court is requested to re-decide the matter after noticing the correct facts. It is expected that the Executing Court will grant an opportunity to the petitioner to put forth her case.

21.04.2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No