

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

(208)

CR-7758-2014

Date of Decision : 29.04.2022

Sanjeev Kumar and Others

.....Petitioners

Versus

Gurdeep Singh and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kamal Joshi, Advocate for the petitioners.

Mr. Akshay Jindal, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

The present civil revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 28.10.2014 (Annexure P-8) passed by the Executing Court whereby the objection petition filed by the petitioners stands rejected.

A brief background of the litigation would be necessary in the present case. An agreement to sell dated 09.01.1997 was entered into qua House No.237 situated at Village Majri, Tehsil and District Panchkula for a total sale consideration of Rs.1,62,500/-. A suit for specific performance was filed by the plaintiff-decree holder (respondent No.1) wherein the present objectors were impleaded as defendant Nos.4 to 6 through their mother since they were minors at that time. The said defendants are stated to have attained majority during the pendency of the suit itself. In the written statement filed it was stated that the defendants (petitioners herein) were

ready and willing to perform their part of the contract. However, during the course of arguments before the Trial Court, it was argued on behalf of the defendants (petitioners herein) that they were minors at the time of the contract and, hence, the agreement to sell was bad in law inasmuch as no permission was taken from the Court prior to the sale of their property. The said argument was rejected by the Trial Court holding that in the written statement a specific stand had been taken by the defendants (petitioners herein) that they had ratified the contract and they specifically pleaded that they remained present before the Sub-Registrar on 13.11.1997, however, the plaintiff-decree holder (respondent No.1) did not turn up. The suit was decreed by the Trial Court vide judgment and decree dated 12.11.2007 (Annexure P-2). The said judgment and decree was challenged by the defendants (petitioners herein) before the Appellate Court. Before the Appellate Court also the plea of minority was also raised. However, the appeal also came to be dismissed vide judgment and decree dated 21.04.2014. The said judgments and decrees attained finality.

It is pertinent to mention that in 2009 the petitioners herein filed a separate suit for declaration that the judgment and decree dated 12.11.2007 was illegal, null and void. The said suit was dismissed vide judgment dated 12.02.2013 (Annexure P-3). Appeal against the said judgment and decree was also dismissed on 11.12.2013 (Annexure P-4). Against the said judgments and decrees, RSA No.1350 of 2014 was filed in this Court which was dismissed as withdrawn vide order dated 11.03.2014 in order to challenge the judgment and decree dated 12.11.2007 by way of appeal.

In both the cases, the pleas regarding minority of the petitioners

herein was raised and stood rejected. The plaintiff-decree holder (respondent No.1) thereafter filed an execution petition in which objections were filed by the petitioners herein. The objections were dismissed vide order dated 28.10.2014 (Annexure P-8) which has been challenged in the present revision petition.

Learned counsel for the petitioners would contend that the petitioners were minors at the time their grandfather had entered into agreement to sell dated 09.01.1997. Learned counsel would further contend that there has been complete violation of Section 8 of the Hindu Minority and Guardianship Act, 1956 and, hence, the judgment and decree was inexecutable. In support of his arguments, learned counsel has relied upon judgments passed by the Hon'ble Supreme Court in **Panni Lal Vs. Rajinder Singh [1993(4) SCC 38]** and **Saroj Vs. Sunder Singh & Ors. [2014(1) RCR (Civil) 227]**.

Per contra, learned counsel for the respondent No.1 has contended that not once but twice the plea of minority was raised by the petitioners and the same stood rejected by the Court in two separate proceedings. The judgment and decrees passed in both the suits had attained finality and the said issue was now being sought to be raised in the execution petition which could not be permitted in law. Learned counsel has further pointed out that it has been noticed in the impugned order itself that the sale deed in question already stands registered by Court through the Local Commissioner vide orders dated 20.01.2010 and 02.02.2010. Learned counsel further contends that the possession in the present case also been delivered and the decree stands satisfied.

Heard.

In the present case, admittedly, in the suit for specific performance the plea of the petitioners being minors at the time the agreement to sell was entered by their grand-father was raised and specifically stood rejected. The said judgment and decree dated 12.11.2007 was challenged in appeal and even in the appeal the same ground of minority was raised which stood rejected and the appeal stood dismissed on 21.04.2014. The said judgments and decrees attained finality.

During the pendency of the proceedings before the various Courts in the suit for specific performance, a separate suit was filed by the petitioners for declaration seeking a relief that the judgment and decree dated 12.11.2007 was illegal, null and void. In the said suit it was stated that the plaintiffs (petitioners herein) sought relief of declaration to the effect that they were absolute owners of their respective shares in House No.237 Village Majri, Tehsil and District Panchkula being Class-I heirs of Surender Singh and the agreement to sell dated 09.01.1997 executed by their grandfather qua the house in question was illegal, null and void and did not confer any right over the defendant therein. In the said suit, Issue No.1 was framed which reads as under :

“1. Whether plaintiffs are entitled for declaration to the effect that judgment and decree dated 12.11.2007 passed by the Civil Suit No.108 of 2001 titled as Gurdeep Singh Vs. Kaushalaya Devi and others is collusive decree and is illegal, null and void, and that plaintiffs are

absolute owners of their respective share in the suit property and that agreement to sell dated 9.1.1997 executed by defendant No.1 without the consent of the plaintiffs being minors at that time is illegal, null and void and does not confer any right or interest in favour of defendant No.3 in respect of suit property ? OPP”

The Trial Court decided the said case against the petitioners and dismissed the suit vide judgment and decree dated 12.02.2013 and against the same an appeal was preferred which was also dismissed vide judgment and decree dated 11.12.2013. Against the said judgment and decrees, RSA No.1350 of 2014 was filed in this Court which RSA was dismissed as withdrawn vide order dated 11.03.2014 in order to challenge the judgment and decree dated 12.11.2007 by way of appeal.

The petitioners have lost two rounds of litigation wherein the same pleas were raised. The petitioners now in the execution petition are wanting to re-agitate the points which were subject matter of two separate suits and the same stood decided against the petitioners and have now since then attained finality. There cannot be any quarrel in the proposition of law laid down in the judgments relied upon by the learned counsel for the petitioners, however, in the present case the said arguments were already raised by the petitioners in two separate suits and the said arguments of the petitioners in the said suits stand rejected. The same having attained finality, the same points could not have been re-agitated before the Executing Court

in the objection petition.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Executing Court. The present revision petition being devoid of any merits is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

April 29, 2022
sandeep

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No