

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**ESA No.19 of 2019 (O&M)
Date of Decision : 05.04.2022**

Kavita Rani

.....Appellant

Versus

Harbhajan Singh & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Brahmeet Singh, Advocate for
Mr. L. S. Sidhu, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been filed challenging the orders dated 14.12.2017 and 13.12.2018 passed by the Executing Court and the lower Appellate Court, respectively, dismissing the third party objections filed by the appellant against the execution of decree dated 26.03.2015 passed by the Trial Court.

Brief facts relevant to the present *lis* are that the decree holder-respondent No.1 filed a suit for recovery of Rs.4,00,000/- against one Surinder Kumar and Prem Kumar. The suit was decreed by the Trial Court vide judgment and decree dated 26.03.2015. Surinder Kumar and Prem Kumar filed an appeal against the decree passed against them. The said appeal was dismissed by the lower Appellate Court on 30.04.2016. Thereafter, the decree holder-respondent No.1 filed an execution application seeking execution of the decree “*by attachment and sale of property of judgment debtor i.e. shown in the site plan attached with this execution. In the alternative conditions warrant of arrest of the judgment debtor be issued*”. The execution application was accompanied with a site plan, copy of judgment and decree dated 26.03.2015 and copy of judgment and decree

dated 30.04.2016.

In 2017 the appellant filed objections to the execution application averring that she had purchased land measuring 15 *marlas* 5 *sarsai* from one Gurcharan Singh vide sale deed dated 10.05.2000 and that she was in possession thereof and that mutation was also sanctioned in her favour and that she was protected under Section 41 of the Transfer of Property Act. It was further averred that the decree holder-respondent No.1 had not made all the co-sharers and transferees parties in the *Khata*. A copy of the sale deed dated 10.05.2000 was attached with the objections. The decree holder-respondent No.1 filed a reply to the objections denying that the appellant had purchased land measuring 15 *kanal* 5 *sarsai* vide sale deed dated 10.05.2000 or that she was entitled to protection under Section 41 of the Transfer of Property Act. It was averred that the appellant had no right, title or interest with the property in dispute.

The Executing Court vide order dated 14.12.2017 dismissed the objections of the appellant holding *inter-alia* that “*Kavita is not party to the judgment. She has produced on copy of her sale deed dated 10.05.2000 as per which she has produced bearing khasra no.61//18, 61//13, 61//14. Decree holder has not claimed any interest in the present judgment in land purchased by objector and his interest is only with regard to recovery of decreetal amount. As per file, no payment has been made by judgment debtors till today regarding decreetal amount. Present objection petition, therefore is filed only to delay execution of judgment and decree in this case*”. The lower Appellate Court also dismissed the appeal of the appellant while holding “*Perusal of file further shows that the decree holder has placed site plan of plot of 10 marla as list of property and the ld. Trial court*

issued warrant of attachment against the above said plot which is belonging to respondent Surinder Kumar etc. The property mentioned in the site plan is situated at Khem Karan Road Hari Ke has been attached by the revenue authority. Further perusal of sale deed dated 10.05.2000 shows that the said property is having khasra number and separate property mentioned in the site plan and attached by revenue department as per order of the ld. Trial court. The property of appellant has not been attached and the appellant wrongly filed the objections before the ld trial court being a wife of Surinder Kumar Judgment debtor just to delay the proceedings and to avoid to pay the decretal amount. Decree holder has not claimed any interest in the present execution in land purchased by the appellant. The ld. Trial court rightly dismissed the objections filed by the appellant". Hence, the present appeal.

Before this Court learned counsel for the appellant has contended that in the garb of attaching property of the judgment debtors (Surinder Kumar and Prem Kumar) the property of the appellant is being attached. According to counsel the property shown as belonging to judgment debtor, Surinder Kumar, in the site plan attached with the execution application is the same as that purchased by the appellant on 10.05.2000. He argued that the Courts below have erred in passing the impugned orders which are incorrect on facts and law.

Heard learned counsel for the appellant and perused the paper-book.

The boundaries of the piece of land said to have been purchased by the appellant on 10.05.2000 are given in the sale deed and are as under :

East side Gulzar Singh

West side Surjit Kaur

South side Pucca Main Road

North side Surjit Kaur

The property sought to be got attached by the decree holder-respondent No.1 has the following boundaries as given in the site plan which was attached with the execution application :

East side Dhawan Pipe & Cement Store

West side Open shop

South side Other property

North side Patti Bhikiwind Road

A comparison of the boundaries of the two properties shows that there is nothing common between them. Not even one side of the piece of land said to have been purchased by the appellant on 10.05.2000 tallies with the boundaries of the property sought to be got attached by the decree holder-respondent No.1. There is nothing on record to link or even remotely connect the piece of land said to have been purchased by the appellant on 10.05.2000 with the property sought to be got attached by the decree holder-respondent No.1. Even during the course of arguments, learned counsel for the appellant could not explain as to how both the properties could be identified as one and the same property.

In view of the discussion above, the pleadings of the parties and the reasoning given by the Courts below, this Court finds no error of law or jurisdiction in the impugned orders. Finding no merit, the present appeal is dismissed. Pending applications, if any, also stand disposed off.

5th April, 2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No