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

**ESA-30-2019 (O&M)
Date of decision : 05.04.2022**

Pirithi

.....Appellant

Versus

Bhagwan Dass and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parminder Singh, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been filed challenging the judgment and decree dated 18.02.2019 whereby the lower Appellate Court has remitted the matter to the Trial Court with a direction to decide the case afresh after taking evidence of both the parties.

Brief facts relevant to the present *lis* are that the plaintiff-appellant, Pirithi Singh, filed a civil suit against his father, namely, Deva Ram, for declaration to the effect that the plaintiff-appellant is the owner in possession of the suit land as detailed in the plaint. Deva Ram, filed his written statement admitting the claim of the plaintiff-appellant and on the basis of the written statement and his statement made in Court, the suit of the plaintiff-appellant was decreed on 24.09.1991. Thereafter, the plaintiff-appellant filed an execution petition seeking execution of the decree by issuing warrant of possession of the suit land. Warrant of possession was issued against Deva Ram. However, during the pendency of the execution petition, on 01.06.1993, the respondents filed a civil suit against the

plaintiff-appellant and his father Deva Ram challenging the decree dated 24.09.1991. On 18.08.1993, during the pendency of their civil suit, the respondents also filed third party objections in the execution petition of the plaintiff-appellant. The execution petition was dismissed as withdrawn vide order dated 04.10.1997. On 04.11.1999 the respondents withdrew their civil suit wherein they had challenged the decree dated 24.09.1991. Thereafter, the plaintiff-appellant filed another execution petition in the year 2002 seeking execution of the decree dated 24.09.1991 and again warrant of possession was issued and vide order dated 29.03.2003 the execution was dismissed as withdrawn being satisfied, on the basis of the statement made by the plaintiff-appellant.

Subsequently, third party objections were filed by the respondents alleging that the decree had been obtained by fraud as the suit land was in their possession and the father of the plaintiff-appellant i.e. Deva Ram was not a co-sharer or proprietor in the *shamlat deh* of the land and was never in possession. The Executing Court, in its wisdom, entertained the objections of the respondents and issued notice to the plaintiff-appellant. Accordingly, the plaintiff-appellant contested the objections on the ground that the decree stood fully satisfied and the objections were false and not maintainable. On 20.03.2009 the Executing Court dismissed the objections on merits in the absence of counsel for the respondents. Aggrieved by the said order dated 20.03.2009, the respondents filed an appeal along with an application for condonation of delay. Vide order dated 04.02.2012 the said appeal was dismissed. Aggrieved by the order dated 04.02.2012, CR No.3745 of 2013 was filed before this Court by the respondents. Vide order dated 26.11.2018 passed in CR No.3745 of 2013 the matter was remitted to

the lower Appellate Court to decide the appeal in accordance with law.

Vide order dated 18.02.2019 the lower Appellate Court remanded the matter to the Executing Court for a decision afresh on merits holding therein that no findings were given as contemplated under Order 21 Rules 58, 97, 99 and 101 of the Code of Civil Procedure, 1908 and that it was incumbent upon the Executing Court to hear and adjudicate every question involved. It was further held that the only remedy available with the objectors was to file the objections under Order 21 Rules 97 to 103 CPC and not a civil suit challenging the order passed by the Executing Court and, hence, withdrawal of the civil suit filed by the respondents would not come in their way. Hence, the present appeal against the order dated 18.02.2019 passed by the lower Appellate Court.

Learned counsel for the appellant has vehemently contended that the decree in the present case stood satisfied and the possession was delivered. It has further been argued that the respondents had filed a civil suit which was subsequently withdrawn by them and hence, the objections filed by them were not maintainable.

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

In the present case, as is apparent from a perusal of the file, a collusive suit was filed by the plaintiff-appellant against his father, Deva Ram, which was decreed, on the basis, of the admission written statement and statement made in Court by Deva Ram admitting the claim of the plaintiff-appellant. On the basis, of the said judgment and decree dated 24.09.1991 passed in the collusive suit, an execution petition was filed wherein third-party objections were filed by the respondents. The said

execution petition was withdrawn on 04.10.1997. Thereafter, another execution petition was filed by the plaintiff-appellant in the year 2002 seeking execution of the same decree dated 24.09.1991 and the same was eventually dismissed as withdrawn on 29.03.2003 being fully satisfied. The respondents had earlier filed a civil suit challenging the decree dated 24.09.1991 but they withdrew the same and filed the present third-party objections. Vide order dated 20.03.2009 the Executing Court dismissed the objections of the respondents on merits, despite the fact, that the counsel for the respondents was not present. The proper procedure would have been to dismiss the objections for non-prosecution rather than to have decided the same on merits in the absence of counsel for the respondents i.e. the objectors. Further, after having once entertained the objections it was incumbent upon the Executing Court to adjudicate upon the right, title and interest claimed in the suit property by the rival parties. Learned counsel for the plaintiff-appellant has not been able to distinguish the judgments relied upon in the impugned order dated 18.02.2019 passed by the lower Appellate Court. The argument raised by the counsel for the appellant that once the decree stood satisfied no objections ought to have been entertained cannot be accepted inasmuch as the remedy with a person not in possession is under Order 21 Rule 99 CPC which reads as under :

“99. Dispossession by decree-holder or purchaser :

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

Order 21 Rule 101 CPC reads as under :

“101. Question to be determined - All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

A conjoint reading of both the provisions of law reproduced above leaves no manner of doubt that the objections by the respondents were maintainable and secondly, it was incumbent upon the Executing Court to decide the said objections in accordance with law. The Executing Court was duty-bound to consider and decide the objections filed by the respondents with complete care and circumspection.

In view of the above, I do not find any illegality and infirmity in the order passed by the lower Appellate Court. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

05.04.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

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