

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

(1) CR-5659-2022 (O&M)

Lilu Ram and others

...Petitioners

Versus

Tulsi Puri (since deceased) thr. his LRs and others

...Respondents

(2) CR-5661-2022 (O&M)

Umardeen and others

...Petitioners

Versus

Shamsher (since deceased) thr. his LRs and another

...Respondents

Date of decision:-21.12.2022

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Bhawna Thakur, Advocate with
Mr. M.K. Garg, Advocate for the petitioners.

H.S. MADAAN, J.

By this judgment, I intend to dispose of above mentioned two revision petitions i.e. CR-5659 and 5661 of 2022 having arisen out of the same controversy.

2. Under challenge in revision petition No. 5659-2022 is order dt. 12.10.2022, passed by Civil Judge (Jr. Divn.) Narwana in Execution Petition No. 13 of 2021 in case titled as 'Tulsi Puri (since deceased) through his LRs Vs. Lilu Ram and others'. Vide the impugned order, the objections under Section 47 read with Section 151 CPC dt. 15.02.2022

preferred by the petitioners were dismissed. Whereas, in the other revision petition No.5661-2022, the petitioners have assailed the same order dt. 12.10.2022, in Execution Petition No. 38 of 2019 in case titled as 'Shamsher and others Vs. Umardeen and others'. Vide the impugned order, the objections under Section 47 read with Section 151 CPC dt. 03.02.2022 preferred by the petitioners were dismissed.

3. Briefly stated facts of the case are that Lilu Ram, Raj Kumar and Ram Kumar sons of Hari Ram, residents of Village Bidhrana, Tehsil Narwana, District Jind for themselves and as representative for inhabitants of Village Bidhrana belonging to Puri and Giri communities had filed a civil suit against Tulsi Puri and Sita Giri claiming ownership of agricultural land measuring 4K-4M. Similarly Umardeen and others also filed civil suit against the same defendants.

4. On getting notice, the defendants in the civil suit had appeared and filed written statements-cum-counter claims, wherein denying the assertions in the plaints, raising counter claims.

5. On completion of trial, learned CJJD, Narwana, vide judgments and decrees dt. 18.08.2015 dismissed the suits filed separately by the plaintiffs and decreed the counter claims of defendants finding them entitled to recover possession of the suit land within six months from the date and to receive mesne profits @ Rs.20,000/- per annum per acre from the dates of judgments. In those very judgments, it was observed that possession of plaintiffs over the suit land was there but defendants were proved to be owners of the suit lands and by taking the plea of adverse possession, the plaintiffs had admitted the defendants to

be true owners in each case.

6. Feeling aggrieved by the said judgments and decrees passed by the trial Court, the plaintiffs in the civil suit had filed an appeal before District Judge, Jind, which were assigned to Addl. District Judge, Jind, who vide judgment and decree dt. 02.08.2019 and 08.05.2019 dismissed the appeals separately, upholding the judgments and decrees passed by the trial Court. Thereafter, the defendants through their legal heirs had filed execution applications, during the course of which the plaintiffs put in appearance and preferred the objections which were contested by the decree holders in both the cases. Regular Second Appeal against the judgments of Ist Appellate Court are stated to be pending in this Court.

7. After hearing the rival contentions, the executing Court had dismissed the objections with the following observations:-

“ After hearing the arguments and perusing the case file, the court is of the finding that the JD has filed the present objections mainly three grounds. Firstly objection taken by J.D. there is non-compliance of provision of Order 1 Rule 8 CPC which makes the present unexecutable. In this regard it is duly admitted on the case file that the Jds had filed a civil suit against the decree holder as well as one Sitagiri themselves as well as representatives of inhabitant of puri and giri of village Bidrana. Admittedly, the suit was filed under representative capacity and application under Order 1 Rule 8 CPC was also filed alongwith the suit. However the present decree holders took objection in their written statement that provision under Order 1 Rule 8 CPC is not applicable because they are the owners of the suit property. Even a perusal of the revenue record in the main

case file reveals that DH alongwith other co-sharers are recorded as owner of the suit property. When a specific objection has been raised by the decree holder in the suit that order 1 Rule 8 CPC has not applicability because they are the co-sharers in the suit land and the court has decreed the counter-claim admitting this objection then the judgment debtor cannot take objection that the present execution is liable to be dismissed for non-compliance of provision of Order 1 Rule 8 CPC. While passing the judgment and decree dated on 01.09.2011, it was specific stand of the DH through out their written statement as well as counter claim that the provision of Order 1 Rule 8 CPC is not applicable and this fact was never agitated by the judgment debtors before the ld. Trial court as well as Ld. Appellate Court that Order 1 Rule 8 CPC is applicable in the suit. Therefore once the objections were not raised in the suit as well as in the appeal then the JDs not entitled to take these objections before the executing court. Hence the court does not find any merit in the objection regarding applicability of Order 1 Rule 8 CPC.”

The order passed in the other execution application is on the similar lines.

8. Now feeling aggrieved by the said orders, the JDs have approached this Court by way of filing the present revision petitions.

9. I have heard learned counsel for the revision petitioners besides going through the record and I find that there is absolutely no merit in the revision petitions. The impugned orders which are under challenge are quite detailed, well reasoned, based upon proper understanding of the factual position and the settled law on the subject

has been taken into consideration while dismissing the objections. The JDs having lost the litigation in the trial Court as well as in the Ist Appellate Court, had been trying to reopen the controversy by filing the objections before the executing Court, which can certainly be not permitted. The objections raised by the JDs were rightly rejected, since they were devoid of any element of merit. Since the Regular Second Appeal filed by the revision petitioners is stated to be pending in this Court, the rights of the parties shall be examined and adjudicated upon in that appeal. There is no reason to interfere with the impugned order while exercising revisional jurisdiction. The revision petitions are found to be without merit and are dismissed accordingly.

21.12.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No