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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-855-2022 (O&M)

Date of Decision : 13.03.2023

Azad Singh Rath

....Petitioner

VERSUS

Balvir Kaur and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S. Virk, Advocate for the petitioner.

Mr. Hitesh Ghai, Advocate for respondent No.1.

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ALKA SARIN, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 20.12.2021 whereby the house of the objector has been put to auction.

On 11.03.2022 the following order was passed :

“Taken up in virtual mode.

Learned counsel for the petitioner would contend that the property of the petitioner, who is not a party to the suit, has been attached vide order dated 19.07.2021. Thereupon, the petitioner moved an application under Order 21 Rule 97 of the Code of Civil Procedure, 1908. However, the same has also been dismissed. Learned counsel for the petitioner

would further contend that in the order dated 19.07.2021, it has been noticed by the Executing Court that the decree-holder has himself stated that this is not the residential house of the judgment debtor and it is locked from outside. However, thereafter, the Executing Court goes on to hold since there is no proof of ownership of the property which is inside the 'Lal Lakeer' of the village and it is only the possession which is material to ascertain the ownership of the parties, hence, the order of attachment was passed. Learned counsel for the petitioner would further contend that once there was no proof of ownership and it was specifically stated by the decree-holder that the property is not the residential house of the judgment debtor and it was lying locked from outside, there was no question of even possession of the judgment debtor being proved.

Notice of motion returnable 28.07.2022.

Meanwhile, auction proceedings shall remain stayed."

Learned counsel for respondent No.1 states that the property sought to be put to auction is the same as mentioned in the heading of the plaint and hence the objections have rightly been dismissed. It is further the contention that the petitioner has not been able to show that he is in possession of the suit property and since the property falls in the Lal

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Lakeer, hence, it is only the possession which needs to be seen. Learned counsel for respondent No.1 further states that the property belongs to the judgment-debtor Manmohan Singh, however, the petitioner is living there illegally.

Heard.

In the present case the property sought to be attached prima facie appears to be different from the property as mentioned in the judgment and decree dated 15.11.2019. Merely on the basis of the voters list it cannot be said that the objector is not in possession of the property which has been sought to be put to auction. There is a serious dispute regarding the ownership as well as possession of the property which has been sought to be put to auction. The objector claims to have nothing to do with respondent No.2 Manmohan Singh, the judgment-debtor.

In view of the above and also the fact that as admitted by the counsel for the respondent that the petitioner is in possession of one room of the property, the Trial Court ought to have gone into the question after framing issues as contemplated under Order XXI Rule 101 CPC.

In view of the above, the present revision petition is allowed and the impugned order dated 20.12.2021 is set aside. The case is remanded to the Executing Court to decide the same in accordance with law. Pending applications, if any also stand disposed off.

It is made clear that the any observations made herein-above shall not be treated as an expression of opinion on the merits of the case.

March 13, 2023
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(ALKA SARIN)
JUDGE