

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

CR-1394-2019(O&M)

Reserved on:-21.4.2023

Date of Pronouncement:-1.5.2023

Narang and others

...Petitioners

Versus

Indra Devi (since deceased) through her LRs and others

...Respondents

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

Present: Mr.Ishan Gupta, Advocate
for the petitioners.

Mr.Varun Jain, Advocate
for LRs of respondent No.1.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 28.1.2019 passed by Civil Judge(Sr.Divn.), Sangrur in execution petition titled as 'Indra Devi Versus Gurcharan Singh and others' vide which an application filed by the objectors for framing of issues had been dismissed.

2. Briefly stated, facts of the case are that plaintiff Indra Devi had filed a suit for possession of land measuring 9 bighas 8 biswas comprised in Khewat No.64 khatauni 234 khasra No.243(6-5), 246 min(3-3) situated in the revenue estate of village Bakhtara, Tehsil and District Sangrur, on the averments that she had purchased such land from Rajbir son of Karan Singh, resident of Jaipur through his attorney. That suit was decreed. Thereafter, the plaintiff Indra Devi filed an execution application

to get possession of the land in question.

3. During the course of execution proceedings, the objectors Narang Singh and others appeared and filed objections contending that decree holder is mother of Jaswant Singh and Mohinder Singh but this fact has not been mentioned in the sale deed; even name of her husband is not there; the decree-holder is not owner of the entire land and she is only a co-sharer, therefore she has no locus standi to take possession of the suit land; furthermore Rajbir Singh vendor of the plaintiff was not owner of the entire suit land but a co-sharer only to the extent of 5/32 share, therefore decree holder has become owner to the extent of 5/64 share at the most, in that way, the decree holder can take symbolic possession to the extent of her share. The objectors claimed that power of attorney No.23 dated 23.5.2000 is a forged and fabricated document because Rajbir Singh did not execute the same. The decree-holder Indra Devi has obtained the decree by playing fraud upon the Court, therefore for proper adjudication of the matter, issues be framed and parties be given opportunities to lead evidence. According to the objectors, they are third party and co-sharers in the suit land and a co-sharer cannot deliver the possession of a specific portion without getting the joint land partitioned.

4. The application was resisted by the decree-holder. It was dismissed by the Executing Court vide the impugned order. For ready reference the operative part of the order is being reproduced as under:

3. After hearing the arguments of learned counsel for both the parties, this Court is of the considered view that decree holder has filed the present execution of decree dated 16.05.2012 and even the

appeal filed by J.Ds was dismissed vide order dated 15.07.2014 but vacant possession was not delivered to the decree holder in terms of decree and appellate order despite the fact that they were bound to deliver the vacant possession of land measuring 9 bighas 9 biswas bearing khasra no.243/6-5 and 246min/3-3 situated in village Bakhtra, Tehsil and District Sangrur, rather J.Ds had filed objections which are pending decision and thereafter objectors Naurang Singh, Kaka Singh and Balbir Singh had filed objections being co-sharers and present application for framing of issues is filed by the objectors/co-sharers claiming that the objections filed by co-sharers are based on facts and issues are to be framed and parties should be given opportunity to leave evidence. However, said request has been opposed by learned counsel for decree holder on the ground that earlier J.Ds had filed objections and now at the behest of J.Ds, co-sharers who were never party to the suit and had never filed suit for possession against the J.Ds who are trespassers have filed objections which were never taken by them at any stage either before trial court or before Appellate court or before Hon'ble High Court wherein RSA was pending and was dismissed vide order dated 13.08.2014. As such, at this stage, objections filed by either J.Ds or objectors cannot be decided by framing issues and by giving them opportunity to lead evidence. It is further argued by learned counsel for decree holder that objectos have no right to challenge the validity of power of attorney or sale of property in favour of decree holder. Further, with regard to the argument of

objectors that decree holder cannot seek actual possession of the property being cosharer with objectors, learned counsel for the decree holder has relied upon various judgments and this court is convinced with the argument of learned counsel for the decree holder that at this stage, this court cannot go into the merits of the objections filed by the objectors and the J.Ds and has to decide only the point as to whether the issues are to be framed or not and since this Court does not consider the objections raised by objectors and J.Ds, such for which the issues have to be framed, the present application is liable to be dismissed and the objectors who have never approached the court or filed any objection to claim possession against the J.Ds who are trespasser cannot restrain the decree holder to claim possession against the J.Ds as the law is well settled that the Executing Court cannot go beyond the decree. Moreover, in case, objectors have any objection to the execution of decree, they have separate remedy against the J.Ds and the perusal of their objections does not reveal that they are claiming that they are in possession of the suit property and as such, they cannot restrain decree holder from getting possession of the suit property against the J.Ds as the suit filed by decree holder is decided in favour of decree holder against the J.D upto the Hon'ble Punjab and Haryana High Court as RSA filed by J.Ds is dismissed. As such, in view of my above discussion, this Court is of the considered view that for deciding the objections filed by the objectors, there is no requirement to frame issues and to give

opportunity to the parties to lead their evidence as the objections filed by objectors are frivolous and have been filed to delay the execution proceedings. Accordingly, present application is dismissed being devoid of any merit.

Now to come up on 07.02.2019 for consideration on objections filed by objectors and J.Ds.

5. Such order left the objectors aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents and respondent No.1/decreed-holder, who had expired and her LRs have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

7. The impugned order passed by the Executing Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The facts and circumstances of the case have been considered and so is the legal position on the subject. After the suit was decreed, an appeal filed by the JDs was dismissed. The objectors, who are stated to be other co-sharers in the suit land seem to have been put forward by the JDs to stall the execution proceedings. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of

exercising the revisional jurisdiction.

8. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 5.3.2019 passed by this Court directing the parties to maintain status quo regarding possession over the suit land thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

1.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No