

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

CR-5416-2022(O&M)

Date of decision:-6.2.2023

Roshan Lal @ Darshan Lal

...Petitioner

Versus

Zile Singh through his LRs

...Respondents

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

Present: Mr.Saurabh Bajaj, Advocate
for the petitioner.

H.S. MADAAN, J.

1. This revision petition is directed against order dated 18.2.2020 passed by the Court of Addl.Civil Judge(Sr.Divn.), Karnal vide which an application under Section 47 CPC filed by the JD Roshan Lal @ Darshan Lal for setting aside sale deed dated 14.2.2019 had been dismissed.

2. Briefly stated, facts of the case are that plaintiff Zile Singh had filed a suit for grant of specific performance against Roshan Lal @ Darshan Lal; that suit was decreed by the trial Court and that decree was upheld by the First Appellate Court as well as High Court; the plaintiff Zile Singh had filed an application for execution of decree in his favour, notice of which was given to defendant/JD Roshan Lal @ Darshan Lal, who had put in appearance; during the pendency of the execution

proceedings before the Court, the plaintiff/decreed-holder Zile Singh had died.

2. Nikam, Babita and Jai Kumar had filed an application for being brought on record as legal representative of Zile Singh on the basis of Will dated 3.9.2014. That application was allowed and they were brought on record as legal representative of Zile Singh, whereas similar application filed on behalf of Narender Singh was dismissed.

3. That order was challenged by Narender Kumar a natural legal heir of Zile Singh before this Court by way of filing CR-235-2017, which was allowed by this Court vide order dated 25.4.2018 and order was modified vide further order dated 28.9.2018 passed in CM-14843-CII-2018 filed in the above civil revision petition. The order passed by the Executing Court was set aside and all the legal heirs i.e. natural heirs and beneficiaries of the Will were ordered to be brought on record for the purpose of pursuing the execution application seeking specific performance of the decree passed in favour of Zile Singh. However, it was clarified that question of Will was being kept open to be decided in the independent proceedings.

4. Accordingly, the Executing Court brought all the natural heirs including beneficiaries under the Will as LR's of Zile Singh. Since the JD did not come forward for execution of the sale deed, the sale deed bearing No.3458 dated 14.2.2019 was got executed and registered through Local Commissioner with the office of Sub-Registrar, Gharaunda in favour of the decree-holders and mutation on its basis was sanctioned.

5. The JD felt aggrieved by execution of that judgment and

decree and filed objections under Section 47 CPC for setting aside of sale deed for the reason that it was contrary to order dated 10.7.2018 as it was to be executed and registered to the extent of 2/3rd share of total land measuring 8 kanals 12 marlas, which comes to 5 kanals 15 marlas and not 7 kanals 3 marlas

6. That objection petition was contested by the decree-holders contending that the objections were not maintainable as the execution proceedings had already been finalized and file had been consigned to the record room. Furthermore, JD had been given ample opportunities to file objections against draft sale deed but he did not take any objection at that time.

7. The Court of Addl.Civil Judge(Sr.Divn.), Karnal vide the impugned order dated 18.2.2020 had dismissed the objections. For ready reference, the operative part of the order runs as under:

6. *In the present case, as discussed above, there are two sets of legal heirs one set is claiming themselves as legal heirs of deceased DH Zile Singh on the basis of natural succession being his sons and other set of legal heirs are claiming their interest on the basis of Will dated 3.9.2014 allegedly executed by deceased DH in their favour. In compliance of order dated 28.9.2018 passed by Hon'ble High Court, the predecessor of this Court impleaded all the legal heirs as necessary parties in the execution petition. However, the question of legality or validity of the Will has not been decided so far. Even in orders dated 25.4.2018 and 28.9.2018 of Hon'ble High Court, question of the Will was kept open to be*

decided in the independent proceedings. Till the legality of the Will won't be decided by any competent authority, it cannot be said that sale deed has to be made qua 2/3rd share or 5/6th share of the suit property. Therefore, at this stage, it cannot be commented that sale deed in question has been wrongly executed and registered. Accordingly, the application under Section 47 CPC is hereby dismissed.

7. *In view of the observations made on main application under Section 47 CPC, the question to restrain the decree-holder does not arise at all. Hence, the application to restrain the decree-holder for getting the suit land partitioned also stand dismissed.*

8. *Now, file be consigned to the record room after due compliance.*

8. Such order left the defendant/JD aggrieved and he has filed the present revision petition.

9. I have heard learned counsel for the petitioner besides going through the record and I find that the revision petition is without any iota of merit.

10. The Court below has rightly observed that the question of legality or validity of the Will is not to be decided by it and till the legality of the will not be decided by any competent authority, it cannot be said that sale deed was to be made qua 2/3 share or 5/6 share of the suit property. The revision petitioner/JD is unnecessarily raising the objections when there is no occasion for him to do so. He was required to execute the

sale deed in terms of the decree passed against him, which had been affirmed up to the High Court. He did not come forward to do so. The Executing Court had no other option but to get the sale deed executed through Local Commissioner. He is raising objections to it without any reason.

11. 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 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.

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

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

6.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No