

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

CR-2232-2023(O&M)

Date of decision:-17.4.2023

Om Parkash

...Petitioner

Versus

Ramesh and others

...Respondents

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

Present: Ms.Mehak Sawhney, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 24.2.2023 (Annexure P10) passed by Civil Judge(Sr.Divn.), Jhajjar vide which in an execution petition filed by the decree holder/plaintiff Ramesh against JD – defendant Bijender and another, third party objections preferred by applicant/objector Om Parkash had been dismissed.

2. Briefly stated, facts of the case are that to execute a decree for recovery of Rs.15,50,000/- with interest and cost passed in his favour as an alternative relief, plaintiff/decreed-holder Ramesh had filed an execution under Order 21 Rule 32 CPC against respondent/JD Bijender, who did not make the payment, therefore the Court ordered attachment and sale of his house. During the course of those proceedings, applicant/petitioner Om Parkash had appeared and filed objections

contending that JD No.1 Bijender was not owner in possession of the suit property, rather the site neath the house had come to share of father of objector in a family partition around 50 years ago wherein a pucca house was constructed in the year 1990, which was later on modified in the year 2019, therefore, the property of objector be released from attachment and auction of the house be stayed.

3. Those objections were resisted by the decree-holder contending that when the Court had ordered the auction of the property of JD No.1 Bijender then Bailiff Rammehar had visited the spot at village Sehlanga, where Dhan Singh, Lambardar had identified property however the objector had not raised any objection in the year 2018 when Bailiff Rammehar had carried out munadi for the auction of property of JD Bijender, which goes to show that no family partition had actually taken place. According to the decree-holder the house of Om Parkash was adjacent and on the western side of the house of JD Bijender and in the year 2019, the objector Om Parkash while modifying his house had merged approximately 8-10 feet of area of the house of JD No.1 Bijender in collusion with him. Earlier an application under Order 21 Rule 97 CPC was filed by this very petitioner/objector, which was dismissed on 19.10.2022. Now another set of objections has been filed under Order 21 Rule 58 CPC on the same facts. The decree-holder prayed for rejection of the objections.

4. Vide the impugned order, the objections were dismissed, leaving the petitioner/objector Om Parkash aggrieved and he has approached this Court by way of filing the present revision petition.

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

6. The Executing Court has clearly observed that though the objector claims that land under his house was received by him from his ancestor, who had actually obtained it in a family partition, which took place around 50 years back but no particulars of that family partition have been given and no document in support thereof has been placed on record. It has also been taken note of that on 31.10.2017 when the Bailiff of the Court had reported about the house of JD No.1 Bijender, that report was verified by Dhan Singh, Lambardar as well as residents of the village and at that time the objector had not agitated the matter in any manner.

It has also been taken note of that execution proceedings are continuing since the year 2018 and it is not believable that till 10.12.2021, the objector did not have any notice regarding the auction proceedings qua the property of JD No.1 Bijender, who is his cousin brother having residence in the adjoining house.

Another factor, which has been considered is that an objection petition filed earlier by this very objector had been dismissed due to non-appearance of petitioner on 19.10.2022. The Executing Court has come to the conclusion that claim of the objector is not only baseless but apparently mischievous and result of collusion between him and JD No.1 Bijender and present objections are nothing but shadow proceedings undertaken at the behest of JD No.1. I do not see any reason to disagree with the Executing Court in any manner.

7. During the course of arguments though counsel for the revision petitioner has referred to various affidavits furnished by some residents of village and a certificate by Gram Panchayat with regard to ownership of house vesting in the petitioner/objector but I find that these affidavits and certificate of Gram Panchayat cannot be taken to be documents of title, which may point out towards ownership of the disputed property vesting in the petitioner/objector. As has been rightly observed by the Executing Court, the objections seems to have been got filed by the JD to avoid execution of the decree inasmuch as the decree-holder after obtaining a decree for substantial amount of more than Rs.15 lakhs is still unable to reap fruit of that decree after passage of about 5 years.

8. Learned counsel for the revision petitioner has referred to judgment *Avtar Singh Versus Gurjeet Kaur, 1997(1) RCR(Civil) 6*, however, this judgment is not applicable to the present case due to the different facts and circumstances and the context in which such observations had been made.

9. 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.

10. 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.

17.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No