

CR No. 3801 of 2023

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2023:PHHC:121641

117 -2

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 3801 of 2023

Date of Decision:13.07.2023

Pooja Kanda

... Petitioner

Versus

Harish Kanda and Another.

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Kusum Raj (Legal Aid counsel)
for the petitioner.

.....

SANJIV BERRY, J.

The instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside the impugned order dated 09.03.2023 (Annexure P-1) passed by Additional Principal Judge, Family Court-II, Jalandhar whereby objections filed by respondent No.2 (Objector) has been allowed .

2. Arguments heard.

3. It is *inter alia* contended by learned counsel for the petitioner that the learned Additional Principal Judge, Family Court-II, Jalandhar while passing the impugned order dated 09.03.2023 (Annexure P-1) allowed the objections filed by respondent No.2 under order 21 Rule 58 read with

Section 151 CPC dated 17.09.2022 (Annexure P-3) which is illegal, arbitrary and against the principles of natural justice and hence not sustainable in the eyes of law and prayed for acceptance of revision petition by setting aside the impugned order.

4. After considering the submissions made by learned counsel for the petitioner in the light of the documents placed on record, it transpires that the petitioner filed application under Section 24 of Hindu Marriage Act, 1955 before the learned Additional District Judge, Jalandhar for grant of maintenance *pendente lite* on 15.12.2015 and the same was allowed vide order dated 19.02.2016 by granting ₹7500/- as maintenance to the petitioner. The petitioner approached this Court for enhancement of the maintenance and vide order dated 13.09.2017 the maintenance was enhanced to ₹12,500/- from the date of application under Section 24 of Hindu Marriage Act but the respondent did not pay any single penny to the petitioner. Thereafter, petitioner filed Execution Petition (Annexure P-2) before the learned Additional Principal Judge, Family Court, Jalandhar and during the pendency of the Execution Petition, petitioner was asked to furnish the list of properties belonging to respondent and the same was furnished by the petitioner on 26.07.2022. On the basis of the same, learned trial Court attached the property of the respondent. Chaman Lal Kanda, respondent No.2 i.e. father of respondent No.1 filed objections (Annexure P-3) to the Execution Petition stating the he has disowned the respondent No.1 from his property and also that he is the exclusive owner of the property. Petitioner filed written reply to the objections and after considering the same the Executing Court allowed the objections filed by respondent No.2 and

directed the petitioner to furnish proper particulars alongwith ownership documents and hence the present revision petition.

5. Learned counsel for the petitioner contends that the objector Chaman Lal Kanda, who is the father of respondent No. 1, has filed the objections in the present execution proceedings merely to delay the proceedings in order to harass the petitioner and, has no right, title or interest to file the same as he is not a party to the proceedings. He further contends that the properties mentioned at serial numbers 2 and 3 in the list of properties belonging to the respondent No.1 as duly furnished by the petitioner for the purpose of the execution proceedings, are ancestral properties as per mutation record bearing No.32505 (Annexure P-5) and are not exclusively owned by the objector-respondent No. 2. It was additionally put forth that neither the objector has disinherited respondent no. 1 nor are they living separately.

6. It transpires from the perusal of record that the property listed at serial no. 2 was originally owned by the grand-father of the objector who, during his lifetime, executed a Gift Deed duly registered in favour of his four sons including the present objector, by virtue of which the said property attained the status of self-acquired property. Thereafter, the objector-respondent No.2 became the owner of the said property after death of his father. Moreover, the objector has disinherited his son-respondent No.1 since 22.10.2007 who is living separately.

7. In the present facts and circumstances, it transpires that once the said properties are exclusively owned by the objector-respondent No.2, the same cannot be attached in the execution proceedings, as respondent No.

1 is neither a co-sharer nor he has any concern whatsoever with the properties listed at serial nos. 2 and 3 i.e. shop-cum-showroom M/s Kanda Mobiles and House No. 510, both located at Subhash Nagar adjoining Gali No.3, Main Banga Road, Phagwara, District Kapurthala, respectively. Furthermore, respondent No.1 has been disinherited by the objector-respondent No. 2 since 22.10.2007 and both are living separately. As stated above, once the respondent No.2 had acquired the property by way of gift from his father during his lifetime, the said property comes in the hands of respondent No.2 as is self acquired property and cannot in any manner be termed as ancestral property. It is a settled law that the property of a third person cannot be attached to satisfy any award or decree. Therefore, in these circumstances the property in the hands of respondent No.2 being his self acquired and being the property of third person not being the judgment debtor, the same could not have been attached and therefore, the learned Court while passing the impugned order had not made any infirmity or illegality in doing so.

8. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed in limine.

(SANJIV BERRY)
JUDGE

13.07.2023

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No