

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

ESA No.3 of 2007 (O&M).

Reserved On: 05.09.2023

Decided on:13.09.2023

Sukhdev Singh**..Appellant****Versus****Committee of Management Shri Gurdwara Sahib
and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Kanwar Abhay Singh, Advocate
for the appellant.****Mr. B.S.Guliani, Advocate and
Mr. P.S.Guliani, Advocate,
for respondent no.1.****ANIL KSHETARPAL, J.**

1. This is an Execution Second Appeal filed by the third party objector to challenge the concurrent orders passed by the Executing Court while dismissing his objection petition which in appeal has been upheld by the first appellate court.

2. In substance, the petitioner claims that he has perfected his title by way of prescription of time (adverse possession).

3. In order to comprehend the controversy involved, some facts, are required to be noticed. Sh. Ram Rikh @ Ram Singh son of Sh. Tulsi was the owner of land measuring 57 bighas 15 biswas situated in village Balbera. He mortgaged the suit land with possession in favour of Sh. Chhaju and Sh. Pritam Singh sons of Sh. Loki and Sh. Kehar Singh against a sum of Rs.600/-. The possession remained with Sh. Chhaju and Sh. Pritam Singh. After consolidation of holdings in the year 1959-60, in lieu of the

previous khasra numbers, the land measuring 160 kanals 16 marlas was allotted and possession was given to Sh. Chhaju and Sh. Pritam Singh. In the year 1952, Chhaju on receipt of Rs.600/- as mortgage amount redeemed the land and surrendered possession in favour of the respondent herein. Sh. Ram Singh @ Ram Rikh, the original owner gifted the property in favour of respondent-Gurdwara Management Committee. Similarly, Sh. Kehar Singh is also stated to have accepted the amount and redeemed the mortgage while delivering the possession back to the mortgagors. However, Sh. Pritam Singh brother of Sh. Chhaju did not accept the amount to redeem the land which led to filing of a civil suit for possession by the respondent against legal representative of Sh. Pritam Singh, who were in possession. Unfortunately, the suit was dismissed by the trial court which in appeal was affirmed by the first appellate court, however, the High Court in Regular Second Appeal No.1044 of 1978, decided on 16.12.1987, passed a decree for possession in favour of the respondent-Gurdwara Management Committee. Appeal filed by the legal representatives of Sh. Pritam Singh before the Hon'ble Supreme Court was dismissed by a detailed judgment on 01.12.1999. On the application, the previous execution petition of the Gurdwara Management Committee (hereinafter referred to as 'the respondent') was revived. Sh. Mohinder Singh son of Sh. Pritam Singh filed objection petition which was dismissed on 12.02.2001. Another set of objections were filed by Sh. Mohinder Singh which were dismissed on 05.09.2001. Civil Revision petition No.6480 of 2001 filed by Sh. Mohinder Singh was also dismissed on 16.01.2003. Yet another set of objections filed by Sh. Mohinder Singh were also dismissed on 16.07.2003. Thereafter, Smt. Churni daughter of deceased Sh. Pritam Singh filed objection petition

which was also dismissed on 23.08.2004. A revision petition filed by the Judgment debtor was dismissed by the High Court on 23.09.2004. Immediately after a period of 15 days, Sh. Sukhdev Singh son of Sh. Chhaju Singh filed a fresh objection petition. In the beginning, the objection petition was dismissed, however, on the intervention of the High Court the issues were framed and the parties were permitted to lead evidence. Ultimately, the Additional Civil Judge(Sr. Division), Patiala/Executing Court dismissed the objections vide order dated 06.11.2006 which in appeal was upheld by the first appellant court on 24.05.2007. That is how, this execution second appeal was filed to challenge the correctness of orders passed by the Executing court on 06.11.2006 which in appeal was upheld by the first appellate court on 24.05.2007.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner contends that the petitioner herein is not a party to the decree and therefore, he cannot be dispossessed from the property in execution of the decree. He further submits that neither the petitioner nor Sh. Chhajju Singh, his father, was impleaded as a party, though, this fact was very much in the knowledge of the respondent. He while referring to the written statement filed by legal representatives of Sh. Pritam Singh contends that it was brought to the notice of the respondents that Sh. Pritam Singh and his brothers are in the possession of the property, still, the petitioner was not impleaded as a party. He further submits that in the first jamabandi prepared after consolidation of holdings, the petitioner is recorded in possession of the property and therefore, the courts have erred in dismissing the objection.

6. On the other hand, the learned counsel representing the respondent contends that only to delay the execution of the decree which attained finality on 01.12.1999, within 15 days of dismissal of the revision petition filed by the JD, Sh. Sukhdev Singh filed objection petition. He further submits that the petitioner's father has already surrendered possession on receipt of mortgage amount and thereafter he is no longer in possession of the suit property. He submits that Sh. Sukhdev Singh (appellant herein) has filed objection only to delay the execution of the decree which became final between the parties on 01.12.1999 i.e. approximately 24 years ago. It is submitted that Sh. Sukhdev Singh has no right, title or interest in the property.

7. This court has considered the submissions of the learned counsel representing the parties and perused the paper book as well as the requisitioned record.

8. A perusal of Ex.O21, it is evident that Sh. Chhajju Singh, the petitioner's father, on receipt of Rs.600/- redeemed the mortgage and surrendered the possession in favour of the respondent. Thus, there is no substance in the claim of the petitioner that he has become the owner by way of adverse possession. Moreover, it is important to note that the land in dispute was in possession of Sh. Pritam Singh which was in litigation with the respondent since 22.04.1969, when suit for possession was filed by the respondent against legal representatives of Sh. Pritam Singh. Moreover, it is also evident that Sh. Sukhdev Singh in connivance with the revenue authorities during the pendency of the previous litigation got an entry made. In fact, patwari of the area has appeared in the proceedings and stated that the entry in favour of Sh. Sukhdev Singh was changed only on the basis of

Daily Diary Report dated 13.10.1973 and 25.10.1972. Except these reports, there is no record in the revenue department regarding change of girdawri in favour of Sh. Sukhdev Singh.

9. Moreover, the appellant as well as legal representatives of Sh. Pritam Singh are closely related. In the previous suit filed by the respondent, legal representatives of Sh. Pritam Singh never claimed that Sh. Sukhdev Singh is in possession of some part of the property. As already noticed, Sh. Chhaju Singh was one of the mortgagee of the mortgage which was redeemed and an entry to this effect was entered into the mutation of 28.06.1952.

10. As regards the objection of learned counsel that in a previous litigation, legal representatives of Sh. Pritam Singh has pleaded that Sh. Pritam Singh and his brothers were in possession of the property. However, it may be noticed that Sh. Chhaju Singh accepted the amount of mortgage and surrendered the possession to the respondent-Gurdwara. Moreover, legal representatives of Sh. Pritam Singh repeatedly filed objections which were dismissed including three by his son and one by daughter of Sh. Chhaju Singh.

11. Keeping in view the aforesaid discussion, there is no scope for interference.

12. Hence, dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

13th September, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO