

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

CR-4826-2019(O&M)

Reserved on:-2.5.2023

Date of Pronouncement:-9.5.2023

Aamin

...Petitioner

Versus

Smt.Mridulata Gupta @ Madhu Lata Gupta and others

...Respondents

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

Present: Mr.Abhimanyu Singh, Advocate
for the petitioner.

Mr.Rakshit Gupta, Advocate
for the respondent No.1.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 9.7.2019 (Annexure P3) passed by the Executing Court in Execution Petition No.82 of 2017 titled as 'Aamin Versus Smt.Mridulata Gupta @ Madhu Lata Gupta and others', vide which the execution petition filed by petitioner/decreed-holder, seeking execution of judgment and decree dated 19.1.2015 (Annexure P1) had been dismissed by such Court.

2. Briefly stated, facts of the case are that plaintiffs Yasin

and others had brought a suit for specific performance against defendants Mridulata Gupta @ Madhu Lata Gupta and others, which was decreed in their favour vide judgment and decree dated 19.1.2015. The defendant No.1 did not come forward to execute the sale deed in favour of the decree-holder in terms of the judgment and decree passed in favour of the plaintiff No.1 and defendant/JD through her GPA had alienated the suit land vide sale deed bearing No.5933 dated 31.3.2015 and mutation No.3010 was sanctioned on the basis thereof.

3. The plaintiff/decreed-holder Aamin had initiated execution proceedings contending that sale deed executed by JD No.1 was illegal, null and void and so was the mutation sanctioned on its basis. Therefore, a direction be issued to the JDs to execute the sale deed in favour of the DH.

4. Notice of the execution petition was given to respondents/JDs. Respondents/JDs No.6 as well as 3, 4 and 7 had put in appearance, whereas remaining respondents were proceeded against ex-parte.

5. The trial Court of Additional Civil Judge (Sr.Divn.), Mewat at Nuh vide the impugned order dated 9.7.2019 dismissed the execution petition granting liberty to the decree holder to file a fresh execution petition after getting declared sale deed No.5933 dated 31.3.2015 as illegal, null and void from the competent Court of

jurisdiction. The Executing Court had observed that as per sale deed No.5933 dated 31.3.2015, the land had been sold by Yasin being GPA for Mridulata Gupta @ Madhu Lata Gupta in favour of Rehmati, Rajmeena, Marham and Rehmo and since the whole of the land regarding which the execution petition had been filed has also been transferred in favour of JD Nos.3 to 6 before filing of the execution petition, therefore, the judgment and decree dated 19.1.2015 could not be executed as that would lead to multiplicity of litigation.

6. Such order left the applicant/DH Aamin aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents. Though only respondent No.1 has put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that the impugned order passed by the Executing Court is not legally sustainable and is bound to be set aside.

8. There cannot be any dispute with the proposition of law that Executing Court is required to execute the decree as it is and it cannot go beyond the decree, which had been passed. However, the Executing Court completely forgetting such basic legal principle by adopting erroneous approach and without trying to understand the proper legal position, has dismissed the execution petition. The

proper course for the Executing Court was to take steps to execute the decree passed in favour of plaintiff/decreed holder Aamin against defendants JDs Mridulata Gupta @ Madhu Lata Gupta and others. In case the purchasers of the land, namely, Rehmati, Rajmeena, Marham and Rehmo have got any objection, they would raise the same before the Executing Court, which could then be adjudicated. It is also to be taken into view that any alienation made during pendency of the litigation is clearly hit by the principle of *lis pendens*. The Executing Court gave unnecessary and unsolicited advice to the decree holder to get the sale deed No.5933 dated 31.3.2015 declared as illegal, null and void from the Court of competent jurisdiction and then approach the Executing Court by filing a fresh execution petition.

9. Learned counsel for the petitioner has referred to judgment **M/s Brakewel Automotive Components (India) Pvt. Ltd. Versus P.R. Selvam Alagappan, 2017(2) RCR(Civil)1047** wherein the Apex Court had observed that the Executing Court has to execute the decree even if it is erroneous and only a decree, which is nullity can be the subject matter of objection under Section 47 of CPC and not one which is erroneous either in law or on facts.

10. In the instant case, the Executing Court by itself without any justifiable reason has jumped to the conclusion that the decree passed in favour of DH is not executable. No objections have been

filed from the side of JDs to the effect that decree passed in favour of the DH was a nullity, therefore the same is unexecutable.

11. Therefore, the impugned order has no legs to stand. The same is perverse and arbitrary and is liable to be set aside.

12. The revision petition is hereby accepted. The impugned order is set aside and the execution petition in question is ordered to be restored at its original number with a direction to the Executing Court to proceed further in the matter to ensure the execution of the decree in favour of the plaintiff/DH Aamin. The Executing Court is further directed to pass orders after properly understanding the factual and legal position on the topic and not in a hurried manner without due application of mind.

13. The parties through their counsel are directed to appear before the Executing Court on 26.5.2023.

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

9.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No