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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3562 of 2022 (O&M)

Date of Decision: 16.01.2023

Rishal Singh and Another

..... Petitioners

V/s.

Bimla Devi and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manish Mehta, Advocate for the petitioners.

Mr. Neeraj Goel, Advocate for respondent No.1.

Mr. Kuldeep Sharma, Advocate for respondents No. 2 to 5.

ARUN MONGA, J. (ORAL)

CM-824-CII-2023

This is an application filed by respondent No.1/objector seeking to place on record report of local commissioner dated 27.02.2020 along with site plan (Annexures R-1/1), expert report of Pal Enterprises dated 06.10.2022 along with site plan (Annexure R-1/2), photographs depicting the suit property (Annexure R-1/3) and bills of purchase of clothes for the shop (Annexure R-1/4).

No grounds worthy of interference are made out to allow the instant application, at this belated stage.

Dismissed.

Main case

Petitioners before this Court are aggrieved against the impugned order dated 20.07.2022 (Annexure P-3), vide which the objection petition filed by the respondent No.1/Objector, who is a third party to the suit proceedings, has been accepted and learned Executing Court has passed an order to dispose of the same

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after framing following issues and giving opportunity to the parties to lead evidence in support of their claims:

1. Whether the objector is in possession in the suit/ Execution property? OPO
 2. Whether the judgment and decree dated 06.01.2017 is not binding upon the rights of the objector? OPO
 3. Whether the objection is not maintainable? OPDH
 4. Whether the objector have no locus standi to file the present objection? OPDH
 5. Whether the objector Bimla Devi filed the objection in collusion with JDs? OPH
 6. Relief.
2. Succinct facts first, as pleaded in the revision petition.
- 2.1. Petitioner/Decree-holders (DHs) are owners of land bearing Khewat No.79, Khatoni No.97, Field No.36//13 area 14 Marlas, situated in Village Gahli, Tehsil Narnaul, whereupon the Judgment Debtors (JDs)/respondents No.2 to 5 made encroachment. DHs thus filed civil suit seeking injunction and possession against JDs, which was eventually partly decreed for injunction alone vide judgment and decree dated 27.01.2014.
- 2.2. Aggrieved against the judgment and decree dated 27.01.2014, DHs filed first appeal, which was allowed by learned First Appellate Court vide judgment and decree dated 06.01.2017, and decree of possession was also granted in favour of DHs.
- 2.3. Regular Second Appeal filed by JDs before this Court was also dismissed by this Court vide judgment and decree dated 14.03.2017. It is claimed that thus, the decree in question is legal, valid and deserves to be executed on the spot.
3. Learned counsel for petitioners submits that the objector-respondent no.1 is daughter of Sajjan Singh and real sister of JDs No.3 to 5 and cousin of JD/respondent No.2, who are residents of village Gahli. However, respondent

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No.1/objector is married to Mukhtiar Singh, a resident of Village Chanani, now District Dadri, for the last 40 years and currently, she is residing in Mohalla Jamalpur, Narnaul with her family. It has further been submitted that the objector has not produced on record her ration card, voter card, voter list, Aadhar card, *chulha* tax, house tax receipt or any proof of residence of village Gahli.

3.1. Learned counsel for petitioners further submits that on one hand, objector claims that her father had given her the suit property while on the other side, she claims the possession of suit property by way of adverse possession, which would necessarily mean that both the pleas are mutually destructive. He further points out that the objector/respondent No.1 nowhere pleaded essential requirements and ingredients of adverse possession.

3.2. Learned counsel for petitioners further argues that it has nowhere been pleaded by the objector that she had ever strained relations with JDs. It shows her connivance with JDs and a secret arrangement amongst them to defeat the legal right of the petitioner.

4. Per contra, learned counsel for the objector-respondent No.1 contests the aforesaid contentions. He submits that the objector has clearly made out a case of adducing evidence *qua* the factual assertion made by her in objection petition. He submits that since she has been in possession of the property for the last 30-35 years having invested an amount of Rs. 20 lakh in the property and has rightly inherited the title from her father and the Executing Court has, therefore, rightly framed the issue *qua* the same and without adducing the evidence *qua* the issues framed, the rights of respondent No.1 shall be severely jeopardized. He accordingly defends the impugned order and submits that respondent No.1 may be given opportunity to adduce evidence.

5. I have heard the rival contentions and shall proceed to render my opinion of the same herein after.

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6. Before proceeding with the rival contentions and rendering my opinion thereupon, it is apposite to reproduce the relevant part of the impugned order which is as follows:

“XX XX

Before proceedings further, it is pertinent to mention here that the plaintiff/DH filed a suit for permanent injunction and possession which was partly decreed and in appeal, it was held the plaintiffs are also entitled for deree of possession. Thereafter, defendants/ JDs filed a RSA in Hon’ble High Court of Punjab and Haryana which was dismissed on 14.03.2017. Thereafter, the present execution petition was filed. Then after disposing of objections of JD dated 13.12.2019, warrants of possession was issued and then on 24.02.2020 the Kanungo visited the spot for compliance of warrants of possession an at that time Bimla, the present objector raised the objection over the spot with regard to possession. She has claimed to be in possession of the property forming the subject matter of decree in her own right. Present objector has requested to decide her objection on merits after taking evidence. Now, as per the provisions of execution under CPC, Court is inclined to dispose off the objections filed by the petitioner after framing issues and giving opportunity to the parties to lead evidence in support of their evidence. For this view, I have relied upon case title as Gram Panchayat Hassanpur Vs. Jagdish Chand and others 2007(4) RCR (Civil) 636 wherein it is held that “Trial of third party objections are like a suit. The same are to be tried and adjudicated like an independent suit.

XX XX”

7. The execution proceedings initiated by the petitioners herein, who have proceeded with the process of litigation has been in three rounds, i.e., one before the trial Court which partly decreed the suit in favour of the petitioners followed by the first appeal wherein the suit was decreed in entirety followed by second appeal filed by the defendant/JDs, which was dismissed upholding the judgment and decree passed by learned First Appellate Court. It is this judgment

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and decree of learned First Appellate Court which now been sought to be executed by the petitioners. Instead of complying with the judgment and decree, it appears to be a case of sheer abuse of process of the Court by respondent No.1/objector, who concededly is a third party to the suit proceedings. She is a family member of the JDs, being first cousin of JD No.2 and real sister of JDs No.3 to 5. While one of the Judgment Debtors has since expired and the respondent/Objector (Bimla Devi), taking the advantage of death and claiming that the deceased had transferred the property in her favour, filed the objection petition No. 21 of 1997 making out certain bald assertions on facts.

8. I have perused the contents of the Objection petition contained at Annexure P-1. Interestingly, the very first and second paragraphs of the same state as below:

*“1. That the present applicant is a resident of village Gahli, and after marriage I am living in Mohalla Jamalpur, Narnaul.
2. That the present applicant’s father, Sh. Sajjan Singh had given a plot to the present applicant in the Village Gahli, whose dimensions are-Ajit Singh in the East, Vishnu etc. in the west, Phirni in the North and Ajit Singh is situated in the south, and on that I had built my houses during the lifetime of my father and a shop was also constructed on it and I am running a shop at the spot, the present application has been doing my work as a shopkeeper an this fat has been in the knowledge of the decree holder and defendants since the beginning, and they never objected to it.”*

9. The aforesaid assertions clearly reflect that the Objector does not even reside in the village where the shop is located. She currently is residing in Narnaul. In the succeeding para, mere bald assertion has been made that she travels from Narnaul to Village Gahali, Mahindergarh to run the shop (property in question) and has been doing so for the past 30-35 years and thus has been in possession of the said shop. Per contra, she has chosen not to file any affidavit and/or rejoinder to

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controvert the reply filed to the objections wherein the Decree Holders have clearly stated that other than making the empty claims she has not shown in her Objection Petition as to who was the initial owner from whom she has succeeded as the current owner in possession. Neither has she disclosed as to what connection her father had with the property in question and whether her father was competent to alienate the said property in her favour to the exclusion and detriment of the other heirs.

10. That apart, the self-contradictory story of the Objector flies in the face of the fact that she got married more than 40-year ago and had been residing with her husband, who was earlier working in Haryana Police and until his retirement was most of the time posted in and around District Bhiwani and it is only after the retirement, that she settled with her husband in her matrimonial home at Narnaul. Though, to cover up the lacunae of living in Narnaul and travelling to Mohindergarh (Gahali), the Objector has very cleverly stated that she would sometimes reside in Village Gahali in Mohindergarh, where the shop in question is located. That too, without giving any particulars of the house or address where she would stay. It is not known as to what is the mode of transportation from Narnaul to Gahli, which is at the distance of 9 kilometres. And, not to be oblivious of the fact that the Objector is currently a senior citizen and, to suggest that she would leave her matrimonial home, at this stage, to run a shop, if not completely unbelievable, most definitely is not appealing to the common sense.

11. In this context, the Decree Holders have rightly objected to her assertions pointing out that she has neither produced any ration card, Voter Card or Voter list or Adhaar Card or *Chulha* Tax or House Tax receipt or any other proof of residing in Village Gahali, which she has pleaded in her objections. Also, the plea of adverse possession cannot be set up at the same time while claiming the possession of the suit property through **non adversorial means**, as it is pleading of

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the objector that the possession of the shop was given to her by her father. I am totally in agreement with the argument put up by learned counsel for the petitioners that both the pleas run contra to each other and are mutually destructive.

12. In view of the aforesaid discussion, the impugned order is set aside. As a natural corollary, the Objection petition filed by respondent No.1 is dismissed and the present revision petition is allowed.

13. It is expected of learned Executing Court that since the decree had attained finality way back in the year 2014, it would proceed further in executing the same as expeditiously as possible, without granting any unnecessary adjournments.

16th January, 2022

Sonia Puri

**(ARUN MONGA)
JUDGE**

Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No