

In the High Court of Punjab and Haryana, at Chandigarh**Execution Second Appeal No. 24 of 2015 (O&M)****Date of Decision: 03.10.2023**

Gurlal Singh

... Appellant(s)

Versus

Harpreet Kaur and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Raghav Dayal Gupta and Mr. Viresh Dahiya, Advocates
for the appellant(s).

Mr. Sanjeev Sharma, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The appellant before this Court is a third party objector. The appellant's objection petition has been dismissed by the Executing Court which, in appeal, has been affirmed.

2. The respondent (decree holder) herein prays for the execution of a decree passed on the basis of the compromise deed dated 23.10.2013. The appellant claims that he has purchased the property vide registered sale deed dated 03.08.2007, i.e. during the pendency of the suit. Thus, the sale in favour of the appellant is governed by the Rule of *Lis Pendens*. Moreover, an independent suit filed by the appellant claiming the decree of declaration that he is an owner in possession has also been dismissed against which the first appeal is stated to be pending.

3. The learned counsel representing the appellant submits that in

Procedure, 1908 (hereinafter referred to as “CPC”), the execution of the decree is required to be kept in abeyance till the appeal filed by him is decided. He submits that if the decree holder is delivered possession, the appellant will suffer an irreparable loss and injury. Order XXI Rule 101 and 104 CPC are extracted as under:-

“101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102 and 103 XXXX XXXX XXXX XXXX

104. Orders under rule 101 or rule 103 to be subject to the result or pending suit.--Every order made under rule 101 or rule 103 shall subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order, is made if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.”

The learned counsel further submits that some construction has been carried

out by the appellant on the property in dispute.

4. On the other hand, the learned counsel representing the decree holder submits that the decree holder had filed a suit in February, 2000 which was decreed on the basis of a compromise on 23.10.2013 and for the last ten years, he has not been delivered possession of the same.

5. Order XXI Rule 104 CPC lays down that every order made under Rule 101 or 103 shall be subject to the result of any suit that may be pending at the time of commencement of the proceedings. In such circumstances, it is evident that Rule 104 does not provide for keeping the execution proceedings in abeyance till an independent suit filed by the appellant is decided.

6. In this case, even the independent suit filed by the appellant has also been dismissed. Thus, there is a compromise decree of 2013 in favour of the respondent (decree holder) as well as the decree passed by the trial Court in an independent suit filed by the appellant. Merely because an appeal has been preferred against the judgment of the trial Court which is stated to be pending is no ground to keep the execution proceedings in suspended position.

7. At this stage, the Court is expected to weigh the balance of convenience as well as a *prima facie* case. Now, it is evident that not only there is a decree passed by the Court in the year 2013 in favour of the respondent, but also an independent suit filed by the appellant has been dismissed after a full-fledged trial. Moreover, both the Courts below have dismissed the objection petition filed by the appellant.

Execution Second Appeal No. 24 of 2015 (O&M)**4**

8. Keeping in view the aforesaid facts, the appeal is dismissed with the observation that if, ultimately, the appellant succeeds in the first or second appeal or before the Supreme Court, he shall have the liberty to file an application under Section 144 CPC for the restitution of the decree.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

October 03, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No