

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

**CR-4614-2023
Date of Decision : 11.10.2023**

Sharuti Saini

..... Petitioner

Versus

Jagdeep Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Naresh Kaushik, Advocate
for the petitioner.

Mr. Anish Setia, Advocate
for respondents No.1 and 2.

Respondent No.3 ex parte.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition, preferred under Article 227 of the Constitution of India assails the order dated 07.10.2022 (Annexure P-1), passed by the Court of Addl. District Judge, Gurdaspur, vide which the application for stay of execution proceedings during the pendency of appeal was rejected.

2. The facts, as emanating from the paper book, are that respondent No.2 Kulwant Singh filed a suit for possession of a house constructed in 7 ½ marlas of land (fully described in the plaint) (hereinafter referred to as 'the house in dispute'), situated at Jail Road, Gurdaspur,

against respondent No.3 Gaurav Kumar. This suit was decreed by the Court of Civil Judge (Junior Division), Gurdaspur vide judgment and decree dated 09.01.2018 (Annexure P-5). Instead of granting the first relief of specific performance, the trial Court granted the alternate relief of refund of double the earnest money of ₹22,00,000/- meaning thereby that refund of ₹44,00,000/- was ordered.

3. An execution petition was filed by respondent No.2-plaintiff Kulwant Singh which was disposed of vide order dated 21.08.2020 (Annexure P-6). The house in dispute was auctioned since the judgment debtor could not pay the decretal amount. A sum of ₹44,00,000/- was ordered to be paid to Kulwant Singh and the remaining sale consideration was ordered to be refunded to Gaurav Kumar. It would be interesting to note that the auction purchaser was none else than the wife of Kulwant Singh namely Jagdeep Kaur-respondent No.1.

4. Be that as it may, the present petitioner Sharuti Saini preferred third party objections (Annexure P-4). The case set up by her was that originally, the house in dispute was owned by one Sh. Karam Chand Saini who was the grand-father of the present petitioner Sharuti Saini. After the death of Sh. Karam Chand Saini, the property was inherited by Updesh Kumar @ Updesh Chaudhary (father of Sharuti Saini). After his death, the house in dispute was inherited by legal heirs of Updesh Kumar in equal shares namely Sharuti Saini, Sudesh Kumari (widow) and Vikas Gaurav Saini (son). The petitioner based her case on a Will alleged to have been executed by her father Updesh Kumar. The objections were dismissed by

way of the impugned order dated 05.09.2022 (Annexure P-3), leading to the filing of the present revision petition.

5. An appeal (Annexure P-2) was preferred by the petitioner in which, an application was moved to stay the execution proceedings during the pendency of the appeal. The said application was dismissed vide order dated 07.10.2022 (Annexure P-1), passed by the Addl. District Judge, Gurdaspur, leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties and have gone through the paper book.

7. Learned counsel for the petitioner has contended that the First Appellate Court erred in dismissing the application for stay. It has been submitted that once the appeal was pending, there was no question of not staying the execution proceedings. It has been submitted that the petitioner shall suffer an irreparable loss if the execution proceedings are not stayed during the pendency of appeal.

8. Learned counsel representing respondents No.1 and 2 has submitted that there is no reason to interfere in the impugned order. It has been contended that the petitioner is basing her claim only upon a Will which is under challenge in a civil suit and rights of the parties are yet to be determined. Learned counsel has contended that if execution petitions are stayed merely on the basis of pendency of some suit, which also has apparently been instituted with a view to defeat the rights of the decree holder, no decree would ever been executed.

9. I have heard the submissions made by learned counsel for the

petitioner but find the same to be devoid of merit. Admittedly, the house in dispute was in the name of Gaurav Kumar. The petitioner has already filed a suit claiming 1/3rd share in the disputed house. This Court does not want to comment on the merits of the issue since the appeal against dismissal of objections is pending. However, such efforts to stall the execution proceedings are not unknown. There is no crystallized right of the present petitioner in the disputed property. If she ultimately succeeds in the civil suit, she can always claim her share in the property or can avail other legal remedies which would be available to her. However, on the basis of a presumptive right, the execution of a decree cannot be and should not be stayed. The First Appellate Court, therefore, rightly rejected the application for stay of execution proceedings. No fault can be found with the same warranting interference in revisional jurisdiction.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

11.10.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No