

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

CM-6037-C-2022
in/and ESA-3-2016 (O&M)
Date of decision: 06.09.2023

Charan Singh and others

..Appellants

Versus

Sukhi Ram and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ram Bilas Gupta, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

CM-6037-C-2022

1. With the consent of the learned counsel representing the applicants-appellant, the main case is taken on Board for final disposal.
2. CM stands disposed of.

Main case

3. The petitioners are children of late Sh. Pyare Lal son of Nihal. They filed a suit for grant of decree of permanent injunction against Rajinder Singh and SHO, Police Station Chhainsa, District Faridabad. The suit was ex-parte decreed and the defendants were restrained from harvesting the crops and from dispossessing and interfering in the possession of the plaintiff over the suit property. The petitioners filed an execution petition under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') claiming that there is a wilful violation of the decree. In those proceedings Sukhi Ram, Randhir, Rajender, Virender, Subhash, Smt. Savitri, Smt. Rajesh and Smt. Shashi, filed the objection petition. The

trial court dismissed the objection petition, however, the First Appellate Court on re-appreciation of facts, has recorded the following findings:-

“26. It is an established fact that three brothers namely Pyare Lal, Kanhaiya and Devi Sahay were owners in possession of property measuring 31 kanals 6 Marlas to the extent of 1/3rd share each. Kanhaiya had agreed to sell his share to Dalip Singh-predecessor-in-interest of objectors. But he failed to executed sale-deed. So, Dalip Singh brought a suit for specific performance. That suit was decreed on 14.9.1985 against Kanhaiya. Its copy is on file.

27. Similarly Pyare Lal had entered into an agreement to sell his share measuring 10 Kanals 1 Marlas out of 10 Kanals 9 Marlas to said Dalip Singh. He too failed to execute sale-deed. A suit for specific performance was brought by him. That was also decreed on 14.9.1985 in favour of Dalip Singh. Thus, Kanhaiya was left with no share. Pyare Lal was left with only 8 Marlas land in this total area.

28. It is claimed by decree holders that it was a different land. But it cannot be believed because that decree-sheet dated 14.9.1985 is on file. It shows same number I.e land bearing Rect. No.63, Killa No. 17/2 (6-8), Killa No.24/1 (3/13). In the suit for permanent injunction filed by decree holders, they filed a jamabandi for the year 2002-03 as Ex.PB. It shows killa No.63/13 (8-0), 14/1 (5-5), 63/18 (8-0) total measuring 21 Kanals 5 Marlas. But complete jamabandi shows that Pyare Lal was in possession of land 63/17/2 and 24/1 total measuring 10 kanals 1

Marla. Thus, they obtained this decree by producing incomplete revenue record.

29. *Similarly, Kanhaiya who was owner of 1/3rd share had also sold his share. Both sale-deeds executed by Local Commissioner at the instructions of civil court are on file. In these circumstances, predecessor-in-interest of decree holders/plaintiffs was left with no land so as to claim its ownership.*

30. *It is interesting to note that in this suit for specific performance filed by Dalip Singh, predecessor-in-interest of decree holders Ramesh and Charan were parties and they were aware of it. But they had no disclosed it. They had not impleaded Dalip Singh or his heirs as party to this suit wherein this decree was passed.*

31. *There is one more aspect that learned trial court/executing Court rejected objection petition as it is a decree for possession. Actually it is a decree for permanent injunction which can only be executed against defendants. One of them is a police official whereas another one is non-existent. So, learned executing Court erred in dismissing objection petition.”*

4. Heard the learned counsel representing the appellants at length and with his able assistance perused the paperbook. Learned counsel representing the appellants contends that the respondents (third party objectors) have neither challenged the correctness of the ex-parte decree nor the revenue entries in favour of the petitioners. Therefore, the

First Appellate Court has erred in accepting the objection petition filed by the objectors.

5. This Court has considered the submissions made by the learned counsel representing the appellants. The third party objectors (respondents) are admittedly not a party to the aforesaid ex-parte decree, which is only for grant of decree of permanent injunction. The same is binding on the defendants in the suit. However, the third party objectors are not claiming any right through the judgment debtors. The decree for permanent injunction is a 'judgment in personam'. It binds the parties to the dispute, however, the same cannot be implemented against the individuals who are claiming their independent rights.

6. In any case, the respondents (third party objectors) are not required to file a suit or an appeal against the decree as they are not the parties. As regards the argument of the learned counsel representing that the third party objectors have not challenged the revenue entries, it may be noticed that the aforesaid submission has no relevance for the decision of the present appeal. Hence, no ground to interfere is made out.

7. Dismissed, accordingly.

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

06.09.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE