

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

ESA-53-2023 (O&M)
Reserved on: 03.10.2023
Date of decision: 09.11.2023

RAMESH CHANDER

..Appellant

Versus

**SARABJIT SINGH (DECEASED) THROUGH
LRS AND ORS.**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Divanshu Jain, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. This execution second appeal filed by the third party objector to assail the correctness of the concurrent orders passed by the Executing Court on 16.12.2021, which in appeal has been affirmed by the First Appellate Court. In substance, the appellant along with his brother filed objection petition claiming that their father purchased the suit property under the sale deed and they have inherited the property from their father. It was also claimed that there is a decree in their favour dated 01.08.2018 against the judgment debtor.

2. It was contested by the decree holder while highlighting that the judgment and decree passed on 01.08.2018 is collusive as the objectors filed the suit on 04.07.2018 and the decree on the basis of compromise was passed on 01.08.2018. It has also been submitted that the aforesaid civil suit was filed by the objectors after the decree for possession was passed by the

trial Court against the judgment debtor, which in appeal was affirmed by the First Appellate Court.

3. The Executing Court on perusal of the revenue record found that 25 marlas of land is recorded to be owned by two persons namely Sh. Lalit Kapoor and Sh. Gurdit Singh. Late Sh. Sarabjit Singh is the son of Sh. Gurdit Singh. As per the facts of the case, Sh. Sarabjit Singh inherited 12 ½ marlas property along with his brother Sh. Jagdish Singh who has sold property measuring little bit more than 6 marlas to the judgment debtor. A suit for possession was filed by the decree holder with respect to two sheds measuring 20' X 42' and 10' X 42'. The aforesaid suit was decreed on 04.05.2015, which in appeal was affirmed by the First Appellate Court on 19.02.2016. The regular second appeal filed by the judgment debtor is pending, however, the interim order was vacated by the High Court on 11.03.2019.

4. It has also come on record that similar objection petition filed by the judgment debtor has already been dismissed.

5. The learned counsel representing the appellant contends that the entire property was sold by the decree holder and the Executing Court erred in dismissing the objection petition without framing the issues and granting the opportunity to the appellant to lead evidence.

6. This Court has considered the submissions of the learned counsel representing the appellant.

7. No documentary evidence has been produced by the appellant to prove that the entire property was sold by the decree holder. The objectors have claimed that the property on the basis of the sale deed, which has not

been produced before the Court. It is evident that the judgment and decree

passed in favour of the objectors is only a collusive compromise decree passed within a period of 26 days. The objectors have failed to even *prima facie* produce any material to convince the Court. It is not necessary that in each and every case, irrespective of the merits of the objections, the Executing Court is required to frame issues. After evaluating the objections and the reply filed by the parties, the Court is required to form an opinion as to whether any triable issue is involved in the given case or not. Thus, the Court is of the opinion that in this case, the learned counsel representing the appellant failed to draw the attention of the Court to any such triable issue.

8. Consequently, finding no merit. The appeal is dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

November 09th, 2023

(ANIL KSHETARPAL)
JUDGE

Ay

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No