

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.117

Case No. : C. R. No. 7148 of 2023

Date of Decision : November 29, 2023

Gurmail Singh		Petitioner
vs.		
Avtar Singh		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Abhinav Jain, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 04.10.2023 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Nihal Singh Wala (for brevity – Trial Court), whereby Objections (Annexure P-2) filed by the petitioner in the Execution Application (Annexure P-1) have been dismissed.
2. The brief facts, as culled out from the petition, are that respondent/plaintiff filed suit for recovery, which was decreed by the learned Trial Court, vide judgment and decree dated 06.10.2012. The appeal filed against the said judgment and decree was dismissed on 21.01.2015. No second appeal was filed against the aforesaid judgment and decree and the same attained finality.
3. The respondent/plaintiff filed Execution Application (Annexure P-1), in which petitioner/defendant filed Objections (Annexure P-2), which

were dismissed by the learned Trial Court vide impugned order dated 04.10.2023 (Annexure P-4).

4. Learned counsel for the petitioner submits that suit of the plaintiff was decreed on 06.10.2012, but prior to that, the property in question stood mortgaged vide Report No.338 dated 06.05.2012 i.e. five months prior to the judgment and decree passed by the learned Trial Court. It has been further averred that property of the applicant was attached which is mentioned in jamabandi for the year 2017-18. The aforesaid Report No.338 was not considered by the Revenue Department and the already mortgaged land was again sold vide Rapat No.249 dated 13.03.2023. So, the said sale is liable to be set aside as the said property was not free from encumbrance and could not be attached. It is the further argument of learned counsel that there was non-compliance of Order XXI Rule 65 CPC. The Naib Tehsildar had sold the land, whereas he was not competent to do so. Further, no proclamation or Munadi was issued by the Court and it was not clear who gave the bid. Even no notice was issued to the Objector. Therefore, the said sale cannot be confirmed.

5. I have heard submissions of learned counsel for the petitioner and have gone through the record.

6. It is admitted fact that the petitioner had already filed appeal against the judgment and decree dated 06.10.2012, which was dismissed on 21.01.2015. During pendency of his appeal, if petitioner would have any good ground or prima facie case in his favour, he would have sought stay of operation of the judgment and decree dated 06.10.2012. But this was not there. Rather, when no second appeal was preferred, the aforesaid judgment

and decree dated 06.10.2012 attained finality.

7. The objections filed by the petitioner are dated 01.07.2023 and the same have been dismissed by the learned Trial Court vide order dated 04.10.2023. The relevant and concluding portion of the impugned order reads as under :-

“5. Perusal of the record shows that Order XXI Rule 66 CPC has been complied with. Copy of the Judgment and decree sheet is also there, wherein the suit of the plaintiff was decreed in favour of the plaintiff/present decree holder. Copy of the appeal filed by the present judgment debtor before the learned District Judge Moga is also on the judicial file and the same was dismissed vide order dated 21.01.2015. Revenue record i.e. jamabandi for the year 2017-18 village Dhurkot Ransih HB No.163 also shows that the said property had been released, which was mortgaged under rapat No.338 dated 06.05.2012.

6. Perusal of the judicial file also reflects that the objections filed by the judgment debtor had already been dismissed by my learned Predecessor Court. Even appeal has also been dismissed by learned District Court. So judgment debtor had come up again with objections, on the same grounds. Thus, when the matter had already been decided, the judgment debtor cannot be permitted to raise the same objections again.

Accordingly, the objections filed by the judgment debtor dated 01.07.2023 are hereby dismissed.

These observations of mine shall not

bear any effect on the merits of the case.”

8. In case Chain Singh vs. Mehar Singh reported as 2000 (2) RCR (Civil) 229, it is held by this Court, where objections as to face of it are frivolous, mala fide and are intended to obstruct process of law, there is no restriction on powers of Court to summarily reject such objections. In the case in hand, objector is judgment-debtor. The objections raised by objector/JD are only to obstruct the process of law. If property was already mortgaged, then auction-purchaser can buy property subject to such mortgage and judgment-debtor cannot object to the same. Such objections cannot be raised by judgment-debtor.

9. In view of what has been discussed above, I find no illegality in the impugned order dated 04.10.2023 (Annexure P-4), dismissing objections filed by the petitioner. So, the present revision petition is without any merit and is accordingly dismissed in limine.

10. Pending applications, if any, shall stand disposed of along with this judgment.

November 29, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.