

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-6251-2022****Date of decision: 05.01.2023****RAJINDER****...Petitioner(s)****vs****MAHINDER SINGH & OTHERS****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

NIDHI GUPTA, J.

Prayer in the present Revision Petition is for setting aside order dated 07.12.2022 (Annexure P3) passed by the learned Additional Civil Judge, Senior Division, Indri whereby third party objections filed by the petitioner have been dismissed.

Brief facts of the present case are that respondent No.1/plaintiff/decreed-holder filed a suit for possession by way of specific performance of the agreement to sell dated 02.05.2013 with consequential relief of permanent injunction alleging therein that respondent No. 2/Judgment Debtor had entered into an agreement to sell with plaintiff/DH on 02.05.2013 according to which defendant/JD agreed to sell the land measuring 7 kanals 17 marlas out of total land measuring 37 kanal 9 marla, comprised in khewat No.21 salam, khatoni No.22, kittas 12 situated at village Shekhpura Khadar, Tehsil Indri,

District Karnal vide jamabandi for the year 2006-07 in favour of plaintiff for a consideration of Rs.29,43,750/- along with rights of rasta, trees, share in tubewell connection, motor kotha, hodi and boring and all rights appurtenant to the suit land. It was further averred in the suit that the defendant/JD had received a sum of Rs.7.50 lakhs as earnest money from the plaintiff/DH in the presence of witnesses. Agreement to sell was duly attested by Notary Public who made the entry in his register at serial No.1944 dated 02.05.2013. Subsequently, on 30.06.2016, respondent No.1/plaintiff/decreed-holder got his presence marked in the office of Sub-Registrar, Indri by getting an affidavit attested showing his readiness and willingness to perform his part of the contract however, respondent No.2/defendant/judgment-debtor did not come present. Thereafter, defendant/ JD openly refused to admit the claim of the plaintiff/decreed-holder. Accordingly, respondent No.1/plaintiff filed above mentioned Civil Suit which was contested by respondent No.2/defendant/judgment debtor. However, vide judgment and decree dated 19.10.2019 Annexure P1, respondent No.1/plaintiff's civil suit was decreed. Thereafter, the plaintiff/decreed-holder filed execution petition No.8 of 2020; wherein the present petitioner filed third-party objections which have now been dismissed vide the impugned order.

Learned counsel for the petitioner submits that the land in question is the joint property of the petitioner and respondent No.2/JD, which fact is evidenced from the revenue record. It is submitted that the petitioner is a co-sharer in the suit land which has not been partitioned till date and therefore, execution is not maintainable as every co-sharer

is owner in possession and has right over every inch of joint land until it is partitioned and therefore, respondent No.1/deGREE-holder cannot claim right over the suit land. It is further submitted that the petitioner along with other co-sharers are going to file suit for partition, however, the Executing Court has erred in not considering these facts. No other argument is made on behalf of the petitioner.

I have heard learned counsel for the petitioner.

The respondent No.1/deGREE-holder purchased land measuring 7 kanal 17 marla from respondent No.2/judgment-debtor, vide Agreement dated 2.5.2013. Decree was also passed in respect of land measuring 7 kanal 17 marla by Id. Addl. Civil Judge, Indri, vide judgment and decree dated 19.10.2019 (Annexure P1). In this regard, the findings of the learned Trial Court are relevant and are reproduced hereunder:

“13. Therefore, from the careful perusal of the entire aforesaid oral as well as documentary evidence led on behalf of both the parties and consideration of rival contentions, it is amply clear that the defendant has pleaded in his written statement that agreements Ex.P1 to P6 are the result of fraud as the signatures/thumb impressions of defendant were taken on some blank/stamp papers by the plaintiff at the time of lending loan of Rs.6 lac on interest @ 24% per annum and thereafter plaintiff manipulated the blank/stamp papers in the form of agreements. Since the signatures/thumb impressions upon Ex.P1 to P6 are admitted by the defendant. Therefore, the onus was upon the defendant as to lead clear and cogent evidence to prove the element of fraud allegedly played by the plaintiff upon the defendant. But in this regard defendant led no evidence. On the other hand, the plaintiff has proved that the stamp papers of Ex.P1, P4 and P5 were purchased by Kapoor Chand on the date of their execution by affixing his signatures in the register of Stamp Vendors. Further, Rajesh Kumar, Notary Public (PW2) proved the due execution of agreements between Kapoor Chand and Mahinder Singh and passing of consideration from Mahinder Singh to Kapoor Chand. Dharam Singh, Stamp Vendor (PW3) and Mai Chand, Stamp Vendors (PW4) have proved the purchasing of stamp papers by Kapoor Chand. Maya Ram (PW5) one of the attesting witness of Ex.P1 to P6 has also proved the due execution of agreements Ex.P1 to P6. Deep Sikha Chauhan (PW6) proved the attestation of Ex.P4 entered in

*the register of her late husband Ex.PW6/A. Meaning thereby, the due execution of agreements Ex.P1 to P6 has been duly proved by the plaintiff and furthermore defendant himself as DW1 during his cross-examination has categorically admitted that whatever the agreements were written between him and Mahinder Singh were in Hindi and same have been signed by him after reading and understanding the same. The another plea of defendant as to that defendant is not competent to sell suit property since the suit property is ancestral joint Hindu family property is also not tenable because onus was upon the defendant to prove that suit property was ancestral joint Hindu family property and mere admission of the plaintiff in this regard is not sufficient. For the sake of agreement even if suit property is taken as ancestral joint Hindu family property then also the agreement to sell Ex.P1 also bears the signature of Surender Kumar only son of defendant Kapoor Chand. The opinion of this Court finds the support from the authority of Hon'ble Apex Court in case title **Vijay A. Mittal & Ors. Versus Kulwant Rai (Dead) Thr. LRs & Anr. 2019(2) RCR (Civil) (SC)**, wherein Hon'ble Apex Court has held as follows:-*

"Agreement to sell by Karta of HUF – Binding on legal representation – Vendor was Karta of Joint Hindu Family – Being Manager of property Karta entitled to alienate Joint Property so as to bind interest of both adult or minor coparceners – One son of vendor signed agreement in question – Therefore, legal representatives were aware of existence of agreement and also had given their consent – Trial Court justified in holding that agreement to sell with plaintiffs was binding on legal heirs of vendor."

Therefore, this Court is of considered opinion that the plaintiff has duly proved his case beyond all probabilities. Hence, issue no.1 & 1A are decided in favour of the plaintiff and against the defendant."

Accordingly, in view of the above findings, the learned trial Court directed the respondent No. 2/JD to execute and register the sale deed in favour of the plaintiff in respect of the suit property in terms of the Agreement to Sell, and further directed to hand over the vacant possession of the suit property to the plaintiff within three months from the date of passing of said judgement. Defendant was further restrained from alienating or creating any encumbrances over the suit property.

The submission on behalf of the petitioner/objector is that the abovesaid decree is in-executable as the petitioner is a joint owner of the suit property. In my view, this contention of the objector is

misplaced. I am in complete concurrence with the observations of the learned Court below that the right of third party qua the share alienated by JD does not affect the right of DH to get the execution of judgement and decree dated 19.10.2019.

In case of '**Rahul S. Shah Vs. Jinendra Kumar Gandhi & others**' Law Finder doc Id # **1834340** it has been held by the Hon'ble Supreme Court as follows:

"25. These provisions contemplate that for execution of decree, Executing Court must not go beyond decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realization of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and decree holder is deprived of the fruits of the litigation and the judgement debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to."

In my view, the above observations of the Hon'ble Supreme Court are ipso facto applicable to the present case.

Moreover, it has been admitted by the petitioner himself in the objections filed by him that the petitioner is going to file a petition for partition of their joint land. In similar circumstances in case of '**Seema vs. Balwinder Singh and others**' Law Finder doc Id # **763935**, a third party had made objections at the stage of execution on the ground that a suit filed by the objector herself was pending regarding the property under execution. Her prayer was that delivery in execution petition be not effected till her own suit is decided. This Court held that *"A third party cannot have a resort to an independent suit and also prevent the executing court from executing the decree."* Even in the

present case, it is open to the petitioner to prove and secure his possession in his independent suit. It has been held time and again that third party cannot prevent the Executing Court from executing the decree.

Further, admittedly, respondent No. 2/ JD was actually owner of only land measuring 2 kanal 14.6 marla. Accordingly, even though decree has been passed in respect of entire suit land measuring 7 kanal 17 marla, and respondent No.2 has received full payment from respondent No.1 for said entire land, yet respondent No.1/DH is claiming execution only with regard to the 2 kanal 14.6 marla of land owned by respondent No.2/JD. Draft sale deed pertaining to only 2 kanal 14.6 marla has been presented before the learned Executing Court with a prayer that execution of sale deed pertaining to only 2 kanal 14.6 marla be executed in favour of respondent No.1/deGREE-holder. It is further noted in the impugned order that respondent No.1 shall initiate appropriate proceedings to recover excess payment made to respondent No.2/judgment debtor. Thus, execution pertaining to only 2 kanal 14.6 marla, which is admittedly in the ownership of respondent No.2/judgment-debtor, has been permitted in favour of DH vide the impugned order. Learned counsel for the petitioner is unable to controvert this factual position.

Accordingly, I find no error in the impugned order passed by the learned Executing Court.

Before parting, it is however, apposite to note the observations of the Hon'ble Supreme Court in **Rahul S. Shah (supra)**, as under:-

"22. These appeals portray the troubles of the decree holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree. ... As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned counsels of parties for response. ...

*23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in **The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Singh (1871-72) 14 Moore's I.A. 605.** which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. ..."*

The above observations are especially relevant in view of the fact that in the present case the judgement debtor was proceeded against ex-parte before the Executing Court, and none had appeared on behalf of the petitioner/third-party objector before the Executing Court at time of passing the impugned order.

It has also come on record that the judgment-debtor/respondent No.2 had also mortgaged his land to respondent No.3/Canara Bank vide two separate applications dated 02.03.2017 and 27.03.2017. However, as Civil Suit of respondent No.1/decreree-holder was filed prior in time i.e. on 14.09.2016, the learned Court below vide order dated 16.11.2022 Annexure P2, had dismissed the objections raised by respondent No.3 herein, in the Execution Petition.

In view of the above discussion, I find no ground is made out to interfere in the impugned order dated 07.12.2022. Present Revision

Petition accordingly, stands dismissed. Pending application(s) if any, also stand(s) disposed of.

05.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No