

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CR-2679-2013 (O&M)

Gurdeep Singh
...Petitioner

Versus

Balwinder Kaur and others
...Respondents

(ii) CR-6820-2017 (O&M)

Gurdeep Singh
...Petitioner

Versus

Balwinder Kaur and others
...Respondents

Date of Decision: February 13, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sunny K. Singla, Advocate
for the petitioner.

None for respondent No.1.

None for respondent No.5.

ARCHANA PURI, J.

These are two revision petitions filed at the instance of Gurdeep Singh, thereby, assailing the orders dated 10.09.2011 and 28.04.2012 passed by learned Executing Court, at different stages of the execution petition filed

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at the instance of decree holders Balwinder Kaur and Ram Chand, thereby, seeking satisfaction of the Award passed in claim petition No.36 of 07.08.1995, decided on 07.05.1999.

For the convenience of discussion, the parties are referred to as making appearance before learned Executing Court.

The material facts, as culled out, from the paperbook, are as follows:-

That, initially, Balwinder Kaur and Ram Chand had filed claim petition to seek compensation, on account of death of their son, in a motor vehicular accident. The claim petition was filed against Gurjant Singh and others, which was decided on 07.05.1999 and while attributing contributory negligence, on the part of deceased son of the decree holders, Award was passed in favour of the decree holders, to the extent of Rs.1,17,500/-. Copy of the Award is Annexure P-1.

For the satisfaction of the Award, execution petition was filed. During the pendency of the execution petition, an application was filed by the decree holders-respondents No.1 and 2, namely Balwinder Kaur and Ram Chand, for seeking declaration to the effect that the impugned sale deed No.1980 dated 25.10.1999, executed by Gurjant Singh s/o Dalip Singh, in favour of Gurdeep Singh s/o Shamsher Singh r/o village Himmatana, Tehsil Malerkotla, District Sangrur, with regard to 1/3rd share of the land bearing Khasra No.955/882/820/375 (0-10) and 883/820/375 (5-10), total measuring 6 Bigha of Khatauni No.19/44, is null and void. Therein, it was pleaded that decree holders had submitted a list of property owned by

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respondent-Gurjant Singh (JD), with regard to the attachment of the property as detailed aforesaid. During the proceedings of the case, it came to the notice of the decree holders that the said property has already been sold by Gurjant Singh-JD, in favour of Gurdeep Singh, vide alleged sale deed No.1980 dated 25.10.1999. In the application, it was averred that Gurjant Singh-JD had knowledge of the passing the Award in MACT petition and intentionally, view a view to deprive the rights of the decree holders, from recovering the amount of Award, has sold the property, without consideration, in favour of Gurdeep Singh and on that premises, a declaration was sought about the said sale deed to be null and void.

In the reply filed by Gurdeep Singh, assertions, so made, were specifically denied.

After hearing the parties concerned, vide impugned order dated 10.09.2011, the application was dismissed. At this juncture, it is pertinent to mention that though, this application was dismissed, but however, the rights of the present petitioner were jeopardized. Before advertng to the same, it is pertinent to the mention that on the basis of the application and reply filed, following issues were framed:-

- “1. Whether property of Gurdeep Singh is liable to be attached? OPA
2. Whether petition is not maintainable in the present form? OPR
3. Whether respondent is a bonafide purchaser it so its effect? OPR
4. Relief.”

Decree holder Balwinder Kaur herself stepped into witness box as DH-1 and thereafter, the evidence was closed. However, all the issues

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were taken up together by learned Executing Court and it was observed therein that though, decree holder-Balwinder Kaur had stepped into witness box as AW-1, but, she failed to appear for cross-examination. No evidence was led by Gurdeep Singh (respondent therein). However, learned Executing Court, though, decided issue No.1 against the decree holders, but decided issue No.2 and 3 against Gurdeep Singh. Furthermore, it was also observed that application is though maintainable, but the applicants have failed to prove the averments, put up in the application and further, the respondent has also failed to establish, his being a bonafide purchaser, without notice.

Feeling aggrieved by the aforesaid observations, petitioner Gurdeep Singh, who was respondent before learned Executing Court, has filed CR-2679-2013.

At the very outset, before coming to the second impugned order, it is pertinent to mention that qua said order, issue No.1, the onus whereof was upon decree holder, thereby, seeking declaration qua the sale deed being null and void, no evidence was coming on record. It had to be decided against the decree holder and it has been so done. Though, no evidence, as such, has been led by the respondent, qua his being bonafide purchaser, but this evidence, ought to have come on record, consequential to the evidence, adduced at the instance of the decree holders. Since, only part statement of Balwinder Kaur was recorded and she never came forth, to face cross-examination, therefore, for all intents and purposes, there was no evidence led, at the instance of the decree holders and that being the

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situation, it was simplicitor required to dismiss the application. However, while dismissing the application, an observation was made about the respondent-Gurdeep Singh to have failed to establish, his being the bonafide purchaser. This observations, as such, could not be made by the Executing Court, without there being any evidence, coming on record, at the instance of decree holders, at first instance.

In the given circumstances, this remark, vis-a-vis, present petitioner Gurdeep Singh (who was respondent before learned Executing Court), being not bonafide purchaser, as such, stands excluded from the order dated 10.09.2011. In view of the same, CR-2679-2013 stands allowed to this extent.

Now, coming to the subsequent order dated 28.04.2012 passed in the same executing petition, relating to which, CR-6820-2017 has been filed. The said order has also been challenged by Gurdeep Singh only, who had purchased the property from Gurjant Singh-original judgment debtor.

Before appraising the impugned order, it is pertinent to make reference to certain zimini orders. The zimini order passed by learned Executing Court on 10.09.2011, is reproduced in verbatim, as herein given:-

“The arguments have been heard on the application declaring the sale deed no.1980 being null and void. Vide separate order of even date, the application stands disposed of, as stated therein.

“Let notice be now issued to District Collector for recovering the amount towards the present execution application, which has been accorded by way of award in a M.V. Act case with a request to recover the said amount as arrears of land revenue. The certificate be issued in the name of Collector qua recovering the decretal amount qua which the instant execution application has been moved. Let the report

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be now awaited till 22.10.11.”

Thereafter, on that date, report was ordered to be awaited till 22.10.2011. On 22.10.2011, again report was not received and case was adjourned for awaiting report for 26.11.2011 and thereafter, file was taken up on 28.11.2011, as the Presiding Officer was to avail leave and case was further adjourned for awaiting of the report for 10.12.2011. On 10.12.2011, recovery warrant was received back unexecuted and fresh recovery warrant was again ordered to be issued and report was awaited till 28.01.2012. It was then taken up in the Lok Adalat and compromise was not effected and fresh recovery warrant was ordered to be issued for 18.02.2012. On 18.02.2012, the recovery warrant was not received back, even unexecuted and reminder was issued for 18.03.2012. Since 18.03.12 was holiday, the case was taken up on 19.03.2012 and the order passed on that date, is also reproduced in verbatim, as herein given:-

“File taken up today as 18.3.12 was holiday. Sh.SS Randhawa Adv. has filed power of attorney on behalf of DH. Recovery warrants has not been received, but copy of letter written by District Collector, Sangrur to Tehsildar whereby Teshildar, Malerkotla has been directed to submit report qua effecting of recovery, but in spite of letter written, report has not been submitted. Let fresh recovery warrants be issued along with certificate for effecting the recovery qua present execution application and report be submitted up till 28.4.12.”

It is evident that the case was further adjourned for 28.04.2012, the date, on which the impugned order was passed. The impugned order also, for appropriate perusal, is reproduced, as herein given:-

“Sh. Ajay Aggarwal Adv. has filed power of attorney on behalf of DH. None has appeared on behalf of JD No.2 despite calling

the case time and again. Heard. JD No.2 is proceeded against exparte. The recovery warrants has not been received. Ld. Counsel has brought to the notice of the court that property which was owned by Gurjant Singh has been sold during pendency of the proceedings of the lis in question, thereafter warrants of attachment has been duly executed and application has also been filed u/o 21 Rule 66 CPC. As vide deciding the application filed earlier vide order dated 10.09.2011 this court has held therein that the transfer so made by Gurjant Singh in favour of Gurdip Singh qua the land which was owned by Gurjant Singh earlier that Gurdeep Singh is not bonafide purchaser rather transfer has been made with malafide simply to defect the rights of DH. Hence, let the warrants for sale be issued qua the property, which has been attached, with specific directions to the revenue authorities the warrants of sale be executed, it be oldest execution application permitting to 10 years old, as per following scheduled, on filing MF etc.”

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|--------------------|-------------------|
| 1. Notice 15.5.12 | 2. Munadi 8.6.12 |
| 3. Auction 17.7.12 | 4. Report 4.8.12” |

In this backdrop, it is pertinent to mention that after the dismissal of the application, vis-a-vis, status of sale deed No.1980 dated 25.10.1999, executed in favour of Gurdeep Singh-petitioner, the recovery proceedings were initiated by learned Executing Court. Nowhere, the purpose or the manner of switching over to the recovery warrants, as such, was mentioned by learned Executing Court. However, on 28.04.2012, when the recovery warrants were not received back, all of a sudden, the Court had observed that warrant of attachment has been duly executed and the application under Order 21 Rule 66 CPC has also been filed. However, no detail of the attached land, as such, has been given. No mention is made, as to when the warrant of attachment was executed and about the detail of the land, which was attached. Not only this, whether any order passed on the application under Order 21 Rule 66 CPC, also relating to the same, the

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impugned order is totally silent. Furthermore, an observation was made with regard to order dated 10.09.2011, wherein, observation was made about Gurdeep Singh to be not bonafide purchaser, rather, transfer having been made with malafide, simply to defeat the rights of the decree holders. This observation, as such, has already been excluded from the consideration, while deciding CR-2679-2013, as observed aforesaid.

In the given circumstances, once the sale deed has been executed by Gurjant Singh, in favour of Gurdeep Singh, it could not be made a subject to put on sale, to satisfy the decree of respondents No.1 and 2. The Award, which forms the basis of the execution was passed on 07.05.1999. The sale deed in question was executed on 25.10.1999. It was executed after passing of the Award. There is nothing, as such, coming on record, as to whether, there was any recital made in the revenue record, about the pendency of the suit and the status of the suit, which forms the basis of the sale deed in question.

In the given circumstances, the transfer of the land, without establishment of it being sham transaction, at the behest of Gurjant Singh, in favour of Gurdeep Singh, the suit land, which forms the basis for the sale deed in question, as such, could not be put on sale, by virtue of order dated 28.04.2012, more particularly, while considering the observations, with regard to Gurdeep Singh, not being bonafide purchaser, having excluded from the order dated 10.09.2011 by this Court. Since, the basis of the order dated 28.04.2012, was the observation made in the order dated 10.09.2011, about Gurdeep Singh, to be not bonafide purchaser, the same also has to be

set aside, consequent to the setting aside of the finding, with regard to Gurdeep Singh, not being bonafide purchaser.

In the given circumstances, CR-6820-2017 is also allowed and the impugned order dated 28.04.2012 is hereby set aside.

In view of the aforesaid discussion, both the revision petition stand allowed.

It is very unfortunate to observe that Award dated 07.05.1999 has not been, till date, executed. In the given circumstances, learned Executing Court is hereby expected to conduct the proceedings expeditiously and decide the execution petition, at the earliest possible.

February 13, 2024	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No