

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1144-2024 (O&M)
Date of Decision: April 22, 2024

Birma Devi
...Petitioner

Versus

Hanuman and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Mamta Malik Rewar, Advocate
for the petitioner.

Mr.R.S.Sharma, Advocate
for respondent No.1.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India to assail the orders dated 12.09.2023 and 04.11.2023, vide which, the objections filed at the behest of the petitioner were dismissed and review application of the same was further dismissed.

In pursuance of notice issued, contesting respondent No.1 has made appearance through counsel.

Learned counsel for the parties heard.

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

That, initially, respondent No.1-plaintiff had filed a suit against Sarjit,

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husband of petitioner Birma Devi, thereby, seeking specific performance of an agreement to sell dated 10.03.2015. The said suit was decreed in favour of respondent No.1, vide judgment dated 31.01.2017, copy whereof is Annexure P-2. The said judgment and decree was assailed by Sarjit by way of an appeal before learned lower Appellate Court and the same was dismissed, vide judgment dated 08.09.2022, copy whereof is Annexure P-3.

Also, it is evident from the paperbook that Birma Devi-present petitioner had also filed a suit for issuance of permanent injunction against Hanuman (respondent No.1) and others, to restrain the defendants from interfering into her possession of the suit property, as detailed in the headnote of the plaint. The said suit was decreed vide judgment dated 24.10.2019, copy whereof is Annexure P-1.

Vis-a-vis, judgment of specific performance, after the dismissal of the appeal filed by Sarjit, husband of Birma Devi, execution petition was filed by Hanuman, copy whereof is Annexure P-5. During the pendency of the said execution petition, Birma Devi had filed objections, thereby asserting about Sarjit, husband of the objector, to be not having any concern with the suit property and also that the decree for permanent injunction was passed in her favour on 31.01.2017, in civil suit No.332 of 2017 and therefore, since she was in possession of the suit property, on the basis of the agreement, executed in her favour, therefore, Sarjit had no right to enter into agreement to sell with Hanuman and thus, the suit for specific performance, ought not to have been decreed and the appeal has also been erroneously dismissed. In these circumstances, she had claimed her right over the suit property.

However, the said objections were dismissed vide impugned order dated 12.09.2023. An application for review of the same was filed and the same was also dismissed vide impugned order dated 04.11.2023.

It is pertinent to mention that from the documents, coming on record, it is evident that at first instance, Birma Devi had filed a suit for issuance of permanent injunction to restrain the defendants from interfering into her possession, over the subject property. It is a ground pleaded by Birma Devi that she had purchased the suit property from Shish Ram and she is residing therein along with her family members. No doubt, the said suit was decreed vide judgment dated 24.10.2019, copy whereof is Annexure P-1. Therein, Hanuman-present decree holder was directed not to dispossess Birma Devi (plaintiff therein), except in due course of law.

The perusal of the aforesaid decree reveals that the objector Birma Devi (who was plaintiff in the Civil Court) could not prove her title over the property in question but however, since the possession of the plaintiff Birma Devi was admitted by the defendants, therefore, it was held by the Court that defendants have no right to forcibly interfere in her possession and dispossess her forcibly, by taking law in their hand.

In the light of the same, it was held that plaintiff is entitled to injunction against the defendants, on the basis of admitted possession thereupon, despite that she has failed to prove her ownership thereupon as Ex.P1 is not a document of ownership. Also, it is pertinent to mention that Birma Devi was held entitled to decree for permanent injunction and JD was directed not to interfere in the possession of the plaintiff, except in due course of law, meaning thereby, JD-present decree holder could proceed as

per law.

Simultaneously, it is pertinent to mention that Hanuman, had filed a suit against Sarjit, husband of Birma Devi for seeking specific performance of the agreement to sell dated 10.03.2015. The said suit was filed on 29.07.2015 and decree for specific performance was passed in favour of Hanuman on 31.01.2017, as evident from the judgment, copy whereof is Annexure P-2. An appeal was also filed by Sarjit and the same was dismissed vide judgment dated 08.09.2022, copy whereof is Annexure P-3. However, no appeal has been preferred by JD-Sarjit, meaning thereby, the aforesaid judgment had attained finality.

Decree holder-Hanuman was restrained from interfering in the possession of the objector, in the civil suit filed at the instance of objector Birma Devi, except in due course of law. Herein, Hanuman-decree holder is proceeding as per law for the execution of the judgment dated 31.10.2017, appeal whereof was dismissed vide judgment dated 08.09.2022. In the given circumstances, since the executable decree is in favour of respondent No.1-Hanuman, therefore, objector-Birma Devi, as such, cannot take the plea about herself to be having an edge over the rights of Hunuman.

Rightly, it has been concluded by learned concerned Court that the executing Court cannot go behind/beyond the decree and it has to execute the decree, as it is. On the basis of the judgment dated 24.10.2019, copy whereof is Annexure P-1, it has been concluded about the objector Birma Devi, not to be having any title in her favour. It is only on the basis of the possession that her suit was decreed and Hanuman, who was one of the defendants before learned concerned Cout, was restrained from

interfering into her possession, except in due course of law. Sarjit was also in possession of the suit property and therefore, decree holder could get the decree executed against him.

Also, it is pertinent to mention that from the impugned order, it is evident that petitioner-Birma Devi had filed an application under Order 1 Rule 10 CPC, to be impleaded as party, in the said suit and the same was dismissed. Meaning thereby, Birma Devi was in knowledge of the pendency of the litigation, at the instance of Hanuman, against her husband. Despite dismissal of the application, no further steps have been taken to challenge the aforesaid order. There was complete silence, at the behest of the petitioner. This conduct of the petitioner, in itself, is a pointer towards connivance, being there between Birma Devi and her husband Sarjit, who had executed an agreement to sell, in favour of Hanuman, on the basis whereof, decree under execution was passed.

Such being the fact situation, learned Executing Court has correctly dismissed the objection petition and the consequential review application also. Thus, the impugned orders merits no further interference, while exercising the revisional jurisdiction of this Court.

Hence, the present revision petition is hereby dismissed.

April 22, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No