

In the High Court of Punjab and Haryana, at Chandigarh

Execution Second Appeal No. 12 of 2021 (O&M)

Reserved On: 12.01.2024
Pronounced On: 13.02.2024

Raj Kumar and Another
... Appellant(s)

Versus

Manoj Chaudhary and Another
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Varun Parkash, Advocate
for the appellant(s).

Mr. Tarun Singla and Mr. Sandeep Jain, Advocates
for the respondents.

Anil Kshetarpal, J.

1. This execution second appeal has been filed by two brothers of the judgment debtor (respondent No.2) to challenge the correctness of a detailed judgment passed by the First Appellate Court while reversing the judgment passed by the Executing Court.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The judgment debtor (Jaiveer) are three brothers, namely Raj Kumar, Rajbir (judgment debtor) and Jaiveer. They were the joint owners of various parcels of the agricultural land, stone crushers, urban properties etc. Rajbir (judgment debtor) gave power of attorney to Sumit Kumar on 02.02.2012. On the basis of the aforesaid power of attorney, Sumit Kumar on behalf of Rajbir executed an

agreement to sell dated 16.10.2012 in favour of the decree holder (Manoj

Chaudhary). As per this agreement to sell, the possession was delivered.

3. On 29.04.2013, there was a settlement between all the three brothers including the judgment debtor and the properties were divided. A litigation with regard to the land measuring 8½ acre was pending against Kuldeep Singh son of Purush Bhan in which alternative relief of the refund of earnest money was granted. While entering into settlement, the brothers have included the aforesaid land measuring 8½ acre while calculating their entire area. Subsequently, there was a slight modification on 06.05.2013 in the family settlement deed dated 29.04.2013. However, that settlement is not relevant for the decision of the case.

4. Manoj Chaudhary, the decree holder, filed a suit for specific performance of the agreement to sell on 19.02.2014 with respect to the land measuring 8 kanals land (1 acre) out of land comprised in rectangle No. 1381 and killa No. 19 & 22. In the aforesaid suit, a compromise was arrived at between the parties before the National Lok Adalat resulting in decree in favour of Manoj Chaudhary with respect to the land measuring 1 acre. He has filed an execution petition in which the appellants have filed an objection. In substance, the appellants (two brothers of the judgment debtor, namely Raj Kumar and Jaiveer) claim that the decree cannot be executed as Rajbir (judgment debtor) has sold the land more than his share, which is vehemently disputed by the decree holder. The Executing Court fell in error while allowing the objections and declaring that the award passed by the Lok Adalat on 06.12.2014 is null and void being not executable. However, the First Appellate Court, in the appeal filed by the decree holder, has reversed the same while re-appreciating the evidence.

5. The correctness of the judgment passed by the First Appellate Court is challenged before this Court.

6. On 19.01.2022, the appellants were directed to place on record the specific information with reference to the various sale deeds executed by the judgment debtor to substantiate the fact that he was not left with any share. In compliance thereof, the appellant No.1 has filed an affidavit dated 17.10.2022. It has been projected that the land measuring 1 acre has been sold by the judgment debtor in favour of Subhash Sharma/M/s R.S.Singla, whereas the land measuring 4 acres has been sold to Ajay Kumar and Hemant Kumar. Similarly, another land measuring 4 acres has been sold to Rishi Pal vide agreement dated 06.04.2009. The land measuring 1 acre on which the judgment debtor has constructed the house has also been included. From the careful reading of Clause (10) of the family settlement deed dated 29.04.2013, it is evident that the land measuring 1 acre has been sold in favour of Subhash Sharma (M/s R.S.Singla) has already been included. With regard to the 4 acres land allegedly sold to Ajay Kumar and Hemant Kumar, the appellants have not provided any particulars of the sale deed/decree in their favour. The First Appellate Court has recorded that there is no sale deed or decree in favour of Ajay Kumar. Similarly, in the affidavit, it has been alleged that the land measuring 4 acres is said to have been sold to Rishi Pal vide agreement to sell dated 06.04.2009, whereas the suit filed by Rishi Pal against the judgment debtor was withdrawn. Thus, it is evident that the appellants failed to prove that the judgment debtor has sold more than the land came to his share.

synopsis with the gist of his arguments, which read as under:-

- “1.

That as per the compromise Ex.O1 Rajbeer was having only 10.1 Acres as his disposal and thus could not sell beyond his share.
2.

The agreement in favour of the decree holder is lis pendens being during the pendency of the earlier suit resulting in Ex O1.
3.

The learned Executing Court rightly held the decree to be nullity being based on concealment and fraud.
4.

The decree under execution is collusive in as much as the GPA (Annexure A-1) which was executed in Noida, had no authority to enter into a sale, agreement to sell or compromise and thus does not effect the right of the objectors.
5.

That the decree of the appellant court is based on misreading of evidence in as much as the Id appellate court based its findings on the agreement dated 28.12.2010 whereas the agreement in the decree under execution was dated 16.10.2012.”

8. On the other hand, the learned counsel representing the decree holder has compiled the tabulated information of the various allegations levelled by the appellants, which is extracted as under:-

S. No.	Details of sale of land by JD as provided by appellants.	Comments of decree holder/respondent No.1.
a)	1 (one) acre (appx. 4	This piece of land has already

S. No.	Details of sale of land by JD as provided by appellants.	Comments of decree holder/respondent No.1.
	bighas) agreement 28/12/2010 vide dated which resulted in a decree (Ex. 011, 012) to Subash Sharma/R.S. Singhla.	been excluded while determining the shares of parties in Family Settlement dated 29.04.2013. Kindly refer clause 10 of Family Settlement dated 29.04.2013. Sale deed No. 11844 & 2103 mentioned in Para 1 of Ex. 011 (Plaint) matches with numbers mentioned in clause 10 of family settlement.
b)	Sold Appx 4 Acres (18 bighas) as per Khatoni of the year 2011 (ExO23) to Ajay Kumar and Hemant.	Appellants have not provided particulars of sale deed or decree in favour of Ajay & Hemant. Para 67 of the Impugned judgment at page 83 of RSA, records that there is no sale deed or decree in favour of Ajay & Hemant. It is settled law that revenue entries do not confer any right or interest in the land. [Please refer Jagdish Prasad Patel Versus Shivnath & Others, 2019(6) SCC 82 and Smt. Bhimabai Mahadeo Kambekar Vs Arthur Import and Export Company & Ors. 2019(3)SCC 191].
c)	4 acres (20 bighas) vide agreement dated 6/04/2009, receipt, GPA and Court decree (Mark B, C and Ex.O29) to Rishipal.	As per Ex 029, suit filed by Rishipal against Rajbir (defendant/ respondent No.2) was dismissed as withdrawn. No particulars of land are mentioned in Compromise (Ex 030). There is nothing on record to show that Rajbir had executed any sale deed in favour of Rishipal.
d)	Respondent No.2 has in his personal occupation of 1 acre (5 bigha) wherein his house was constructed as per	As per appellants own admission in additional affidavit dated 17.10.2023. JD/Respondent No.2 had 3 bighas of land with him. This is wrong in light of the facts stated

<i>S. No.</i>	<i>Details of sale of land by JD as provided by appellants.</i>	<i>Comments of decree holder/respondent No.1.</i>
	<i>Ex.O1.</i>	<i>above. JD/Respondent No.2 had sufficient land to satisfy the decree. It may be noted that decree holder/respondent No.1 is already in possession of the suit property and in execution proceedings DH is only seeking execution & registration of his sale deed. Be that as it may, in case objector's/appellant's share is found to be less they may claim the shortfall from this 1 acre (5 bigha) from JD/respondent No.2.</i>

9. This Court has considered the submissions of the learned counsel representing the parties.
10. With regard to the first argument, it shall be noticed that on the careful perusal of the settlement dated 29.04.2013, the land measuring 13 acres came to the share of judgment debtor, namely Rajbir. However, the judgment debtor and his two brothers included the land measuring 8½ acres which was the disputed property. The suit filed by one of the brothers, namely Jaiveer, has resulted in money decree and the aforesaid land measuring 8½ acres has not come to their share. As already explained, the appellants have failed to prove that Jaiveer has already sold the land more than his share.
11. Another argument of the learned senior counsel representing the appellants has no basis because the earlier suit filed in between the brothers has also resulted into a compromise decree. Whereas the said decree dated 29.04.2013 whereas the agreement to sell in favour of the decree holder was

executed on 16.10.2012. Moreover, the appellants have failed to prove that the award passed by the National Lok Adalat is infringement of the aforesaid family settlement. The previous litigation in between the family members, at the most, makes any transaction subservient to the result of the litigation. However, the appellants are required to prove that Rajbir has defeated the aforesaid object.

12. With regard to next argument, it shall be noticed that the First Appellate Court has given elaborate reasons while observing that the Executing Court erred in allowing the objection petition. The Executing Court has gone into the issue of possession, which is not a dispute in the present case. The decree holder is already in possession. He has not sought decree for possession. Hence, only a sale deed is to be executed. The Executing Court has erred in going into the issue of possession, which is not relevant to the decision of the present case.

13. As regard to the next argument, it shall be noticed that the learned counsel representing the appellants has failed to draw the attention of this Court to any provision which prohibits the execution of the general power of attorney in Noida if the property is located in Faridabad. It shall be noted here that Rajbir, the owner/judgment debtor, has never challenged the correctness of either the power of attorney in favour of Sumit Kumar or the decree dated 06.12.2014.

14. With regard to the last argument, it shall be noticed that there is a small printing order in the order passed by the First Appellate Court. However, that error is inadvertent. In para 56 of the impugned order, the

First Appellate court has made reference to the agreement to sell dated

28.10.2010, however, in para 79, due to inadvertence, the date of agreement to sell has been recited as 28.12.2010. However, it is not the case of the appellant that there was any agreement to sell in favour of the decree holder dated 28.12.2010.

15. Keeping in view the aforesaid facts and discussion, finding no merit in the present appeal, the same is dismissed.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 13, 2024
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No