



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5184-2023(O&M)

Date of Decision: August 01, 2024

Ajay and another

...Petitioners

Versus

M/s Silver Line Builders Pvt. Ltd. And others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Madhur Panwar and Mr.Aman Pal, Advocates
for the petitioners.

Mr.Ashish Aggarwal, Senior Advocate with
Ms.Aashna Aggarwal, Advocate for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 09.08.2023 passed by learned Executing Court, whereby, the objections filed, at the instance of petitioners, vis-a-vis, execution of the judgment and decree dated 28.01.2014 were dismissed.

The facts germane, to be noticed, are as follows:-

That, initially, Shri Kishan, father of the petitioners, namely, Ajay Kumar and Vijay Kumar, entered into an agreement to sell with respondent No.1-M/s Silver Line Builders Pvt. Ltd., for the sale of land, on **15.12.2005**. The stipulated date for execution of the sale deed was on or before **14.12.2006**. However, prior to the target date, the release deed bearing **Vasika No.12755 dated 18.09.2006**, pertaining to the suit land, was executed by Shri Krishan, in favour of the petitioners. The petitioners,

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while asserting their right, on the basis of the release deed, had filed a suit against their father Shri Krishan, thereby, seeking permanent injunction to restrain him from selling and alienating the suit land to anyone else and from creating any type of charge over the suit land, in any manner whatsoever. The said suit was decreed vide judgment and decree dated **28.05.2008**.

However, the suit for specific performance was filed by respondent No.1-M/s Silver Line Builders Pvt. Ltd. against Shri Krishan, as well as his sons, Ajay and Vijay (who are petitioners herein) and also against Anil and Lalit, sons of Rajender alias Raj Kumar, brother of Shri Krishan and also against Punjab Land Development Bank, Gurgaon, through Manager, who was arrayed as defendant No.6. This suit was filed on **26.02.2007** and the same was decreed in favour of respondent No.1-M/s Silver Line Builders Pvt. Ltd. On **28.01.2014**.

Feeling aggrieved, the present petitioners-objectors, together with Anil and Lalit, had filed an appeal on **22.03.2014** against Silver Line Builders Pvt. Ltd. and therein, Shri Krishan was impleaded as performance-defendant. The said appeal was decided against the petitioners (objectors) and other appellants on **19.02.2020**.

Not only this, learned Appellate Court judgment was further challenged in RSA-30-2021 filed by Shri Krishan and another RSA-31-2021 filed by Ajay and Vijay (both the present petitioners). However, the same were dismissed vide judgment dated **25.02.2021**.

Thereafter, Shri Krishan had filed SLP No.17268-2021 and even Ajay

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and Vijay filed SLP No.17197-2021. Both the aforesaid SLPs were dismissed by the Hon'ble Supreme Court, while observing that 'We are not inclined to interfere'.

In this backdrop of such long drawn litigation, spinning around the suit land, at the stage of execution, the objections were filed by the petitioners and the same were dismissed vide impugned order dated **09.08.2023**.

Feeling aggrieved, the present revision petition has been filed by the petitioners-objectors.

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

Learned counsel for the parties heard.

In the objection petition, it was asserted that the execution petition is not maintainable against respondent-judgment debtors No.2 and 3 (who are petitioners in the herein). As per the contents of the decree under Civil Suit No.64 of 26.02.2007, the decree pronounced by the Court is not proper, complete and justified in the eyes of law and became a defaulted decree. The objectors-petitioners are having a legal decree dated 28.05.2008, after filing of Civil Suit No.93 of 10.03.2007, in their favour. This was earlier than the decree under execution and enforce in their favour. The defendant i.e. Shri Krishan was restrained from selling and alienating the suit land to anyone else and from getting any type of charges over the suit land, by virtue of this decree.

Also further, it was stated that the decree under execution dated



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28.01.2014 was decreed and relief granted was as herein given:-

“In view of my findings given on issue No.1 to 7 suit of the plaintiff succeeds and is hereby decreed with costs and a decree for specific performance of agreement to sell dated 15-12-2005 with a direction to defendants No.1 to 5 to execute the sale deed in favour of the plaintiff qua the suit land on receipt of the balance sale consideration and to pay mortgage amount, if any, to defendant No.6 out of the said sale consideration, within two months from today, failing which the plaintiff shall be at liberty to get the sale deed executed through the court on behalf of defendants No.1 to 5. Decree sheet be prepared accordingly. File be consigned to the record room, after due compliance.”

Further, it was asserted that defaulted decree can never be executed in favour of decree holder against the persons, who are not part and parcel and beneficiaries of agreement to sell and that the decree holder under execution, never challenged and sought relief against the executed release deed No.12755 dated 18.09.2006 and already obtained decree dated 28.05.2008, is in favour of the objectors-petitioners. Since the decree dated 28.05.2008, still exists, therefore, the decree, which is also endorsed in the revenue record, on the basis of the release deed dated 18.09.2006 and thus, the decree now under execution, do not call for execution.

It was also asserted that suit land is ancestral property of the objectors-petitioners. Judgment debtor No.1 (Shri Krishan) had no right to enter into agreement to sell, with regard to the ancestral land of the objectors, without legal necessity. Hence, the execution petition is not tenable in the eyes of law and the same is liable to be dismissed.

In reply, respondent No.1-decree holder M/s Silver Line Builders Pvt. Ltd., resisted the claim of the petitioners-objectors. It was

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asserted that no valid judgment and decree dated 28.05.2008 was passed by the Court in Civil Suit No.93 of 10.03.2007. Even though, the said decree is prior to the decree sought to be executed by way of present execution, but however, no relief was sought, vis-a-vis, release deed bearing Vasika No.12755 dated 18.09.2006. However, it was submitted that this was bogus and fictitious release deed, executed by JD No.1-Shri Krishan, in respect of the suit land, in favour of his sons i.e. JDs No.2 and 3 (petitioners) and his brother's sons JDs No.4 and 5.

However, it was also state that the said release deed was challenged. Further, it was also stated in the reply that the said release deed was held to be collusive and not binding upon the plaintiff-decree holder (present respondent No.1). So far as, the judgment and decree dated 28.05.2008 is concerned, the decree holder/present respondent No.1, acquired knowledge of the same, for the first time, when the affidavit of DW-1 Shri Krishan was tendered in evidence as Ex.DW1/A. Along with the affidavit, copy of the judgment and decree dated 28.05.2008 was annexed. Thereupon, on scrutiny of the aforesaid judgment, they came to know about the defendants No.2 and 3 i.e. petitioners, having instituted a suit for permanent injunction against defendant No.1-Shri Krishan, restraining him from alienating the suit land.

Furthermore, it was asserted in the reply by respondent No.1 that it came to know about the aforesaid documents, when tendered into evidence on **27.09.2013**. Not only this, even the application for amendment was preferred to challenge the legality and validity of the judgment and

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decree dated 28.05.2008, but however, the said application was dismissed by the Court. Therein, the Court had also observed that the questioned judgment was judgment in personem. The applicant (respondent No.1- herein) being not a party to such decree, is not bound by it and therefore, need not challenge the same in any court of law.

Also, further it was asserted that the judgment and decree dated 28.05.2008 was obtained by playing fraud upon the Court. Moreover, the judgment and decree dated 28.05.2008 was tendered into evidence, at a later stage and while taking the same into consideration, the judgment and decree dated 28.01.2014 was passed by the Court.

In view of the respective submissions made, as observed aforesaid, vide impugned order, the objections filed by the petitioners i.e. JDs No.2 and 3 were dismissed.

It is necessary to note that in the suit for specific performance filed by respondent No.1-M/s Silver Line Builders Pvt. Ltd., Shri Krishan, who was seller, as per the agreement to sell in question, together with present petitioners Ajay and Vijay as well as Anil and Lalit sons of his brother Rajender alias Raj Kumar, were impleaded as defendants, besides Punjab Land Development Bank, Gurgaon.

In paragraph No.7 of the plaint, the plaintiff-respondent No.1 had challenged the legality of alleged bogus and fictitious release deed dated 18.09.2006, while giving reasons for impleading others as defendants, apart from Shri Krishan, as coming forth.

For the convenience of appraisal, paragraph No.7 is



reproduced, in verbatim, as herein given:-

“7. That officials of the plaintiff were utterly shocked and dismayed when they came to know on 12.12.2006 that defendant no.1 along with his brother had created a bogus and fictitious released deed bearing vasika no.12755 dated 18.9.2006 pertaining to land referred to above in favour of his real sons defendant no.2 and 3 and his brother's sons i.e. defendants no. 4 and 5. The office bearers of plaintiff further came to know that attempts were being made by defendant no.1, his brother and defendants no. 2 to 5 to get sanctioned mutation on the basis of aforesaid bogus and fictitious release deed. Scrutiny of the revenue record revealed that the land in question was reflected to be mortgaged to Punjab Land Development Bank (defendant no. 6). The defendant no. 1 had all along been conscious and aware of the fact that the land in question was comprised within controlled area of District Gurgaon. Defendant no. 1 was further aware of the fact that unless and until No Objection Certificate from Town Planning authorities was obtained no sale deed can be executed and registered in favour of the plaintiff. Once the plaintiff acquired knowledge of the bogus release deed mentioned above and mortgage referred to above, its office bearers contacted the defendant no.1. However, defendant no. 1 adopted an extremely casual attitude and conveyed that he would surely sort out everything.”

It is evident from the judgment dated 28.01.2014 that the release deed was proved as Ex.D1. However, copy of the judgment dated 28.05.2008, came forth as Ex.D15/A. Also, it is evident that in pursuance of the judgment Ex.D15/A, proved in evidence, to challenge the legality and validity of the judgment and degree, an application for amendment was filed, which was dismissed, while making observations that ‘judgment under challenge is judgment in personem. The plaintiff not being party to such decree is not bound by it and therefore, need not to challenge the same, in any Court of law’.

Also, further it was held that it is now settled law that any declaration granted under Section 34 of the Specific Relief Act, is judgment in



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personem and is binding only against the parties to the proceedings. In this regard, reliance was placed upon *Smt.Nilima Majumder vs. The State of West Bengal, (Calcutta), (DB) 2008(2) ICC 609* and *Gnanasoundari vs. Vairakannan (Madras) 2012(7) RCR (Civil) 1246*.

In the light of the same, it was concluded that plaintiff not being party to the judgment and decree, is not required to challenge its validity, by way of carrying out proposed amendment and thereupon, the application was dismissed. It is necessary to note that requisite steps were taken by the respondent No.1-plaintiff to challenge the judgment and decree dated 28.05.2008. Not only this, even in the judgment passed by the Court in the suit for specific performance dated 28.01.2014, these release deeds dated 18.09.2006 (Ex.D1 and Ex.D2), in favour of defendants No.2 to 5, which also included present petitioners, were held to be concluded move, on the part of the defendant No.1-Shri Krishan to frustrate the claim of the plaintiff (respondent No.1 herein).

Also, further it was observed that law in this regard is well settled that an act of collusive transfer of land, to someone else is not binding on the vendee and the vendee is entitled to decree for possession by way of specific performance of the agreement. It was further observed that decree obtained is collusive transactions, intended to defeat the interest of the vendee. By making such observations, it was held that the release deed dated 18.09.2006 executed by defendant No.1, in favour of defendants No.2 to 5, qua the suit land, being collusive, are liable to be ignored. While so holding, the suit for specific performance of agreement to sell dated



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15.12.2005 was decreed.

This aspect was further considered by learned Appellate Court in the judgment dated 19.02.2020, copy whereof is Annexure R-4, wherein, it was held that it was an intentional act, on the part of respondent No.1 (Shri Krishan) to wriggle out from the agreement to sell in question i.e. 15.12.2005. Also, qua the assertion of suit property being ancestral, learned Appellate Court categorically, in paragraph No.31 of the said judgment, had observed that the submission about the suit property in the hands of their father i.e. respondent No.2 (Shri Krishan) is also devoid of merits, as except the bald pleadings, not an iota of evidence has been led on record, to substantiate this plea.

Then came forth the RSAs decided by this Court on 25.02.2021 (Annexure R-5). Therein also, it was held that it is well settled that Karta has a right to sell the property for legal necessity. It was also observed that it is well settled that the co-parceners have no right to seek injunction on alienation. Reliance was placed upon the judgment passed in *Sunil Kumar and others vs. Ram Parkash and others, 1988 (2) SCC 77*. Still further, it was observed that Shri Krishan's sons have a right to challenge the alienation by a separate suit. Hence, in such circumstance, particularly when before both the Courts below, the aforesaid aspect was never seriously pressed, this Court does not find it appropriate to examine the issue in detail. It was held that there is no merit in the both the appeals and the same were disposed of with modification of the interest component.

Of course, thereupon, SLPs, as observed in the earlier portion

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of the judgment, were filed by Ajay Kumar and Vijay Kumar (present petitioners) as well as Shri Krishan and the same were dismissed by the Hon'ble Supreme Court on 08.11.2021 and 12.11.2021 (Annexures R-6 and R-7).

Thus, from the aforesaid seriatim of fact of the long drawn litigation, it becomes evident that right from the initial round of litigation, till the Hon'ble Supreme Court, various aspects, with regard to the claim of the petitioners-objectors, laying their better hand to the suit property, on the basis of judgment and decree dated 28.05.2008, having obtained ex-parte, prior to the target date, as per agreement to sell dated 15.12.2005, were dealt by the Courts, repeatedly and there was denial to the claim. Consequently, the respondent No.1-M/s Silver Line Builders' claim for specific performance, had an edge and was granted.

In this backdrop, at the stage of execution of the decree dated 28.01.2014, again on the same counts, objections were raised. Each of the objections have been dealt by the Executing Court. Close perusal of the impugned order reveals that the Executing Court has categorically dealt with the question of maintainability of the execution, vis-a-vis, judgment dated 28.05.2008 and further also, observed about the judgment and decree dated 28.05.2008 having obtained by virtue of playing fraud upon the Court and it has also already been held by the Courts to be collusive one. Not only this, even another objection, vis-a-vis, the decree holder having failed to challenge the legality of the release deed, was also dealt by the Executing Court. The legality of this judgment came under scrutiny, at initial stage of



litigation, in the first judgment rendered by learned trial Court and it was held to be collusive. On this account, the Executing Court observed about the objections merely to have been raised only for the sake of objecting.

Furthermore, with regard to objections raised about the JDs not having any right to enter into agreement to sell with the decree holder, without any legal necessity, it was again observed that the Executing Court is not empowered to go beyond the decree passed by learned trial Court. In this regard, suffice to make mention to the decision rendered by this Court in RSAs (copy whereof is Annexure R-5), wherein, it was categorically held that the Karta has a right to sell the property for legal necessity and also that it is well settled that co-parceners have no right to seek injunction on alienation. Also, further it was observed that Shri Krishan’s sons have the right to challenge the alienation by way of separate suit.

Eventually, again at the execution stage, the objectors as such, cannot re-open the litigation and assert their right, on the basis of the judgment and decree dated 28.05.2008, while asserting ancestral nature of the suit property, which had been duly dealt by the Courts, at various stages of litigation.

In the given circumstances, the impugned order brooks no interference. Hence, the revision petition sans merit and is hereby dismissed.

August 01, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No