



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.17 of 2015 (O&M)

Date of Order:22.07.2024

Raghvir Kaur and others

.Appellants

Versus

Gurpreet Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Kumar Saini, Advocate
for the appellants.

Mr. D.R.Punia, Advocate
for respondents no.1 and 2.

ANIL KSHETARPAL, J

1. In this Execution Second Appeal, the holders of the judgment and decree assail the correctness of the order passed by the First Appellate Court.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Gurdev Kaur and others filed a suit for possession, recovery and for permanent injunction against Sh. Satpal. The plaintiffs claim that the suit property was owned and possessed by Sh. Chanan Singh, who was the father of plaintiffs no.1 to 4 and maternal grandfather of plaintiffs no.5 and 6. The plaintiffs claim that the suit property was given to the defendant for running a brick kiln for a period of 5 years, and the said period has come to an end. The suit was decreed on 14.12.2009. In the execution petition, the possession was sought to be taken. Sh. Gurpreet Singh and others filed objections claiming right, title or interest in the suit



property. In fact, Sh. Gurpreet Singh claimed property on the basis of a Will executed by Sh. Chanan Singh. The First Appellate Court found that the decree passed against Sh. Satpal is 'in personam' and not 'in rem'. Thus, the court held that the decree cannot be implemented against Sh. Gurpreet Singh, however, the court held that the warrants of possession can only be issued against Sh. Satpal, the Judgment Debtor.

4. This appeal has been filed by some of the decree holders in a civil suit filed by their predecessor against Sh. Satpal. The aforesaid decree can only be executed against Sh. Satpal and not against Sh. Gurpreet.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant submits that Sh. Gurprit Singh and Sh. Harprit Singh, the objectors filed two different civil suits which have been dismissed. Moreover, the matter with regard to determining the question of title is pending before the High Court in Civil Writ Petition No.7075 of 2007 (**Smt. Gurdev Kaur and others vs. Financial Commissioner (Revenue) and others**).

7. Per contra, the learned counsel representing the respondents submits that the proceedings before the High Court are arising from the order passed by the Financial Commissioner in mutation proceedings. He submits that the question of title cannot be decided in a writ petition.

8. This court has considered the submissions of the learned counsel representing the parties.

9. Admittedly, the objectors are not a party to the judgment and decree dated 14.12.2009, passed in Civil Suit No.1281 of 2003. Such decree



passed by the Civil Court in a civil suit is binding only upon the persons, who are a party to the suit. Additionally, there is no judgment and decree against the objectors. When the objectors were minor, they filed a suit for declaration which was withdrawn by the natural guardian. The court did not appoint court guardian. The second suit filed by the objectors was dismissed for non-prosecution. Hence, there is no judgment and decree deciding that the objectors have no right, title or interest in the suit property.

10. With regard to the second submission of the learned counsel, it may be noted that the mutation of the property is only for the purpose of updation of the record. In these proceedings, the question of title is not decided. The order passed by the Financial Commissioner is only qua sanction of mutation. As per the order passed by the Financial Commissioner, the objector have been held entitled to sanction of mutation. The correctness of such order is challenged before the High Court in Civil Writ Petition No.7075 of 2007. The High Court in exercise of writ jurisdiction is not expected to decide the question of ownership. Hence, the pendency of Civil Writ Petition has no relevance to the decision of the present appeal.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

July 22, 2024

(ANIL KSHETARPAL)
JUDGE

nt

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO