



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

125

**CR-7027-2023 (O&M)
Decided on: 09.05.2024**

PARAMJIT KAUR**...Petitioner****Versus****VED PARKASH AND ORS****...Respondents****CORAM: HON'BLE MRS JUSTICE RITU TAGORE**

Present: Mr. Prashant Bansal, Advocate, for the petitioner.

Mr. Hardip Singh, Advocate, for respondents No.1 and 2.

None for respondent No.3.

RITU TAGORE, J.

1. Mr. Hardip Singh, Advocate, has filed vakalatnama on behalf of respondents No.1and2, same is taken on record, subject to just exceptions. None on behalf of respondent No.3, despite served through his counsel, representing him before the learned trial Court.

2. Challenge in this revision is to the order dated 07.10.2023 (Annexure P-10) passed by learned Executing Court, Rajpura in Execution Petition No.47 dated 28.10.2016 (I.D.No. EXE-126 of 2016) titled as 'Ved Parkash Vs. Tarlochan Singh'.

3. Learned counsel submits that petitioner is legally wedded wife of respondent No.3. She filed a suit (Annexure P-1) for grant of maintenance allowance by way of creating a charge over House No.643 as well as two shops constructed in the house, situated at Navyog Colony, Kalka Road, Old Rajpur, Tehsil Rajpura as detailed in the head note of the plaint against respondent



No.3. Vide order 03.01.2020 (Annexure P-2), learned Additional Principal Judge, Family Court created a charge upon the house in favour of the petitioner.

4. The learned counsel further submitted that respondents 1 and 2 in collusion with each other, got a civil suit filed for possession by way of agreement to sell against respondent No.3 and the said suit was decreed in favour of respondents No.1 and 2 vide judgment and decree dated 01.07.2016 (Annexure P-3).

5. Addressing further, learned counsel stated that despite creation of charge regarding the house bearing No.643, as detailed in the plaint (Annexure P-1), the respondents No.1 and 2 in collusion with respondent No.3 got filed an execution petition for implementation of the decree dated 01.07.2016 (Annexure P-3), and got the sale deed executed in their favour. The learned counsel stated that respondents No.1 and 2 were impleaded as defendants in the civil suit filed by the petitioner, wherein, she challenged the judgment and decree dated 01.07.2016 (Annexure P-3) and sale deed bearing document No.2019-20/9/1/4945 dated 12.03.2020 executed in favour of respondents No.2 and 3 on the basis of judgment and decree dated 01.07.2016 with consequential relief of permanent injunction restraining the respondents and their agents etc. from illegally and unlawfully dispossessing the petitioner from the house in dispute.

6. Learned counsel further submits that the petitioner filed objections in the execution filed by the respondent Ved Parkash. On hearing the parties, learned Executing Court, vide order dated 29.05.2023 (Annexure P-6) partly allowed the objections of the petitioner and stayed the execution proceedings qua the house bearing No.B-1/632 alone and not against the shops built on the



part of the house. Being aggrieved by the aforesaid order, the petitioner filed an appeal, which is pending adjudication before the learned Appellate Court.

7. Learned counsel for the petitioner submits that on the application (Annexure P-7) of the petitioner, vide order dated 07.10.2023 (Annexure P-10) learned Executing court reviewed its own order and issued warrants of possession qua the house as well as shops. It is stated that learned Executing Court was not competent to recall/review its own order and further without any basis, especially when the matter is subjudiced before the learned Appellate Court against the order dated 29.05.2023 and before the learned Family Court, that created the charge over the house in question for the maintenance of the petitioner. It is urged that the impugned order is clearly unsustainable in the eyes of law and should be set aside.

8. Contrary to it, learned counsel for respondents No.1 and 2 defended and supported the impugned order (Annexure P-10), stating that respondents No.1 and 2 are lawful owners of the suit property i.e. a house, having shops built on it. The suit filed by the respondents was decreed in their favor prior to the filing of the suit (Annexure P-1) by the petitioner. The learned counsel stated that the present suit has been filed by the petitioner in collusive with respondent No.3, the husband of the petitioner, after he lost legal battles against the respondents No.1 and 2. The learned counsel stated that petitioner has no right or title or interest in the house and the shops built in the house. It is stated that there is no infirmity in the order. The revision should be dismissed being meritless.

9. I have heard learned counsel for the parties and have gone the paper book with their valuable assistance.

10. It is a matter of record that respondent No.1 and 2 obtained a



decree of specific performance vide judgment and decree dated 01.07.2016 (Annexure P-3) against respondent No.3, the husband of the petitioner. It is also a matter of record that sale deed was executed on 12.03.2020 in favour of respondent No. 1 and 2 on the basis of judgment and decree dated 01.07.2016.

11. It is suffice to say that petitioner initially filed a suit for maintenance against respondent No.3 on 31.03.2018 and learned Family Court created a charge over the suit property vide order dated 03.01.2020 (Annexure P-2) qua the house in dispute in favour of the petitioner. It is also an undisputed fact that an Execution Petition for implementation of judgment and decree dated 01.07.2016 (Annexure P-3) was filed on 28.10.2016. The petitioner filed objections (Annexure P-4) in the said Execution Petition and vide order dated 29.05.2023 (Annexure P-6) execution qua the house was stayed. Thereafter, an application (Annexure P-7) was moved by the petitioner for staying further proceedings in the execution regarding the shops as well as recall of the order dated 27.07.2023 vide which warrants of possession of the shops were issued. On the said application, the learned Executing Court passed an order dated 07.10.2023 (Annexure P-10) thereby recalling its previous order and issued warrants of possession for both, shops and the house.

12. It is a matter of record that respondent No. 1 and 2 were also impleaded as parties/respondents in the civil suit filed by the petitioner, which is pending for filing written statement by the respondents No.1 and 2 and appeal is also pending before the learned Appellate Court against the order dated 29.05.2023 (Annexure P-6).

13. The learned counsels for the parties could not refute the factual position as detailed above. In the face of above factual matrix, to the considered opinion of this Court, learned Executing Court erred in issuing the



warrants of possession qua house in question as well shops, by recalling its earlier order, when the matter regarding suit property is admittedly pending adjudication before the Courts concerned. The learned Executing Court by passing the impugned order reviewed its own order without any basis which is not permissible under the law and committed jurisdictional error.

14. For the reasons stated above, the Revision is allowed in terms that order dated 07.10.2023 (Annexure P-10) passed by learned Executing Court, is set aside with directions to the learned Appellate Court to decide the objections qua the shops and Family Court to decide the matter qua the house expeditiously. The respondents may move an appropriate application before the Courts concerned for the early decision or for any other relief as available to them.

15. Needless to mention, the aforesaid expression is confined purely for the issue in hand in this revision and has no bearing on the merits of the matter pending before the concerned Courts.

16. Pending applications, if any, shall also stands disposed of.

(RITU TAGORE)
JUDGE

09.05.2024
smriti

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No