

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

1. ESA-38-2023 (O&M)
Date of decision: 25.03.2025

JAGDISH SINGH AND ANOTHER ..Appellants

Versus

LAKHVIR SINGH AND ANOTHER ..Respondents

2. CR-2921-2023

JAGDISH SINGH AND ANOTHER ..Petitioners

Versus

LAKHVIR SINGH AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Pal, Advocate
for the appellants/petitioners.

Mr. Naresh Kaushik, Advocate
for respondent No.1.

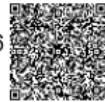
Mr. H.S. Dhindsa, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. With the consent of learned counsel for the parties, two connected cases, one execution second appeal and one civil revision shall stand disposed of by this common order.

2. It is alleged by the appellant that Sh. Lakhvir Singh and Sh. Nirmal Singh are married to two cousin sisters, hence, they are co-brothers. Learned counsel for the respondent No.1 submits that he has no knowledge about the aforesaid fact.

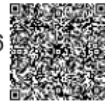
3. Sh. Lakhvir Singh filed a suit for recovery of Rs.17,00,000/- against Sh. Nirmal Singh, which was decreed on 28.09.2016.



4. Sh. Nirmal Singh was owner of two separate properties. One was 11 kanal 1 marla land located in Village Rajur comprised in Rectangle No.3, Khasra No.11, Rectangle No.21, Khasra No.7, 14, 15, 16, 17, 24, 28, Rectangle No.8, Khasra No.4, 5, 6, 15, 16 and 25 and 3 kanal and 16 marlas in Village Malewal, comprised in Rectangle No.10, Khasra No.17/1. The decree holder Sh. Lakhvir Singh filed execution petition on 19.01.2017. Sh. Nirmal Singh sold 11 kanal and 1 marla land to the appellants Sh. Jagdish Singh etc. vide registered sale deed dated 27.03.2018. Till that day, there was no attachment of the property of Sh. Nirmal Singh located in village Rajur. The property belonging to Sh. Nirmal Singh and judgment debtor at village Malewal comprised in Rectangle No.10, Khasra No.17/1 was attached by the Tehsildar on 30.08.2018. Sh. Jagdish Singh etc., the appellants filed objection petition. The Court dismissed the objection petition while observing as under:-

“Perusal of the file further reveals that vide order dated 31.05.2018 passed by the Court of Ms. Manpreet Kaur, CJ/JD, Ludhiana the property bearing Khasra No.10//7/1 was ordered to be attached by the Court. No other order is on file. The objectors have failed to convince this Court in this regard that the property purchased by them has been attached by the Court. Therefore, the objections are not sustainable in the eyes of law and the same are hereby dismissed and disposed of. However, the liberty is granted to Baldev Singh and Jagjit Singh to move appropriate application with substantial record as to attachment of the properties. The objections stands disposed of.”

5. On 29.03.2023, both the properties namely, the one located in village Rajur and the other in village Malewal were sold by way of Court auction despite the report of the Patwari to the effect that the property at village Rajur is owned and possessed by Sh. Jagdish Singh etc. (appellants).



The property was purchased by the decree holder namely Sh. Lakhvir Singh. The appellant filed appeal against order dated 06.08.2022, which has been dismissed by the First Appellate Court. The execution second appeal has been filed by Sh. Jagdish Singh etc. challenging the order passed by the Executing Court as well as First Appellate Court.

6. In civil revision petition, Sh. Jagdish Singh etc. assail the correctness of Executing Court's order dated 29.03.2023, ordering issuance of sale certificate in favour of decree holder.

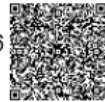
7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. Learned counsel for the petitioners/appellants submits that the property at village Rajur was neither subject matter of attachment nor it was owned by the judgment debtor on 29.03.2023. He submits that the property at village Rajur was in fact never attached.

9. Learned counsel for respondent is unable to dispute the aforesaid factual position, however, he submits that the First Appellate Court has correctly dismissed the objection petition because the sale deed has been executed after the decree was passed on 28.09.2016.

10. This Court has considered the submissions of learned counsel for the parties.

11. It is evident that the Executing Court has not comprehended the issue in proper perspective. It was a simplicitor money decree passed in favour of Sh. Lakhvir Singh. In execution petition, the property was required to be attached, hence, the property located in village Malewal was ordered to be attached.



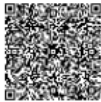
12. In these circumstances, the rights of appellants were never adjudicated. There is no finding of the Courts that the sale in favour of appellants/petitioners was executed in order to defeat the rights of the creditors so as to invoke Section 53 of the Transfer of Property Act, 1882. The sale in favour of the appellant can be avoided only if it is found that Sh. Nirmal Singh sold the property in order to defeat the claims of creditors namely Sh. Lakhvir Singh.

13. Keeping in view the aforesaid facts, the auction of property at village Rajur is set aside.

14. Consequently, the sale certificate issued in favour of decree holder qua the property at village Rajur shall stand recalled. The Executing Court is requested to permit the parties to lead evidence on the following issues:-

- i. Whether the sale deed dated 27.03.2018 was executed in order to defeat the claim of the creditor (decree holder) Sh. Lakhvir Singh.
- ii. Whether property at village Rajur was ever subject matter of the attachment.
- iii. What is the effect of order passed by the Executing Court on 06.08.2022.
- iv. Whether the decree holder and judgment debtor are related to each other and are colluding to defeat the rights of Sh. Jagdish Singh etc.

15. With these observations, execution second appeal as well as civil revision petition are disposed of.



16. The parties through their learned counsel are directed to appear before the Executing Court on 24.04.2025.

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

March 25th, 2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*