



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

ESA No.18 of 2014 (O&M)

Date of Order:02.05.2025

Sudarshan Kaur

.Appellant

Versus

Daljit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

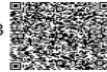
**Present: Mr. A.P.S.Sandhu, Advocate
for the appellant.**

**Mr. Dhiraj Chawla, Advocate
for the respondents.**

ANIL KSHETARPAL, JUDGE (Oral)

1. The appellant before this court is holder of a court decree for recovery of Rs.9.50 lacs, passed by Civil Judge, on 12.03.2008. In execution of the aforesaid decree, the property of Judgment Debtor-Davinder Kaur was attached. The respondent-Daljit Singh filed objection petition claiming that he is a bonafide purchaser of the property from Sukhbir Singh, vide registered sale deed dated 05.06.2006. In fact, Davinder Kaur is alleged to have sold the property in favour of her relative Sawinder Singh on 06.04.2004, which in turn was gifted to Sukhbir Singh on 20.07.2004, which in turn was sold to Daljit Singh.

2. The Executing Court came to the conclusion that repeated transfer of property by Davinder Kaur in favour of her relatives is to defraud the creditor under Section 53 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act'), thus, the objection petition filed by Daljit Singh was dismissed.



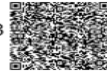
3. The First Appellate Court reversed the Executing Court's order on the ground that the first sale deed was executed by Davinder Kaur in favour of Sawinder Singh before filing of the suit for recovery. Moreover, even if Davinder Kaur, Sawinder Singh, Sukhbir Singh and Daljit Singh were related to each other, still they were not closely related. Hence, the sale in favour of Daljit Singh is legal because Section 52 of the 1882 Act would not be applicable.

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

5. The learned counsel representing the appellant has made the following submissions:-

- (i) JD was found in possession of the property on 18.03.2005 and 20.05.2008;
- (ii) Daljit Singh admits that he, Davinder Kaur and Sawinder Singh are closely related.
- (iii) Daljit Singh admits that the original sale deed dated 06.04.2004, gift deed dated 28.07.2004, were handed over to him by Davinder Kaur;
- (iv) Similar objections were filed by Ranjit Kaur claiming to be purchaser of the property. The moment, the appeal filed by Daljit Singh was allowed by the First Appellate Court, she withdrew her objections

6. The learned counsel representing the respondents submits that the First Appellate Court has recorded a finding of fact that there was a sale of property before the filing of the suit. It was a simpliciter suit for



recovery, hence Section 52 of the 1882 Act would not be applicable.

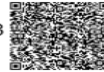
7. In fact, the First Appellate Court has overlooked the provisions of Section 53 of the 1882 Act. If it is found that the sale has been made to defeat the rights of the creditors, the Executing Court is entitled to declare the same illegal. The Executing Court while dismissing the objection made such declaration, however, the First Appellate Court failed to advert to Section 53 of the 1882 Act. In fact, the First Appellate Court side stepped Section 53 of the 1882 Act.

8. Daljit Singh appeared in the execution petition as DW1. He stated as under:-

“It is correct that the copy of sale deed dated 06.04.2004 and gift deed dated 28.07.2004 which I have produced in this court was handed over to me by Davinder Kaur w/o Kashmir Singh r/o H.No.250 Majitha Bypass and I, Davinder Kaur and Sawinder Singh were closely related....”

9. In a suit for recovery, summons were sent to Davinder Kaur, however, she refused to receive the summons. The report is as under:-

“Summons sent for the service of defendants received back with the report of refusal. Keeping in view the report made on the summons, I am satisfied that the defendant is intentionally avoiding her service and is ordered to be summoned through ordinary manner. Now she is ordered to be summoned through munadi on deposit of munadi fee for 26.04.05.



Sd/-
ACJ 18.03.2005”

10. Thereafter, the court directed issuance of notice through local proclamation. The court officer after carrying out the local proclamation, reported as under:-

“Sir,

It is submitted that I have come present at the spot for service of summons at Ekroop Avenue r/o 250, Davinder Kaur w/o Kashmir Singh have not been found at the spot as such service could not be completed. Her relatives are found in the house. They have told me that she has gone to Amritsar City for some work. Report is submitted. Sd/- Rakesh Kumar 10.05.08.

Sir,

It is submitted that I have again come present at the spot for service of summons. I inquired and asked for Davinder Kaur w/o Kashmir Singh. There was a sound at the gate and she said she is coming out. Thereafter, on getting information about summons Davinder Kaur hide herself. A copy of summons and petition has been affixed/pasted on conspicuous part of property. Report is submitted. Sd/- Rakesh Kumar 20.05.08.”

11. Thus, it is evident that Davinder Kaur was in possession of the property. Obviously, the sale by Davinder Kaur in favour of Sawinder Singh, her relative, was a sham transaction. Daljit Singh is also related to Davinder Kaur. Furthermore, it is evident that Davinder Kaur and her



relatives have tried to play fraud with her creditor.

12. Keeping in view the aforesaid facts and discussion, the Execution Second Appeal is allowed, with costs of Rs.1,00,000/- which shall also be recovered from the sale of the property.

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

(ANIL KSHETARPAL)
JUDGE

May 02, 2025
nt

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