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Court : Punjab and Haryana

Decided On : May-08-2014

Appellant : it Is Claimed That the Plot Which Forms Subject Matter of the

Respondent : Sajjan Singh and Another

Judgement :

CR No.109 of 2013 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CR No.109 of 2013 (O&M). Decided on:-May 08, 2014. Bhagwan Dass.Petitioner. Versus Sajjan Singh and anotherRespondents. CORAM: Hon'ble Mr. Justice Dr. Bharat Bhushan Parsoon. ***** Argued by:- Mr. K.S.Dadwal, Advocate for the petitioner. Mr. Sunil Agnihotri, Advocate for respondent No.1. Dr. Bharat Bhushan Parsoon, J.

This civil revision petition has been preferred by a third party objector in execution of decree dated 27.5.2006 claiming that the judgment- debtor in the decree was having no right, title or interest in the land and thus, the decree against him is unexecutable.

2. It is claimed that the plot which forms subject matter of the decree under execution was owned by Babu Ram father of the revisionist- petitioner who while making testamentary succession by way of Will dated 7.8.1989 had ignored his two sons out of 7 and judgment-debtor was one of the two ignored sons of the

owner. It is averred that the judgment-debtor had been deprived of any share in the property in dispute. It is, thus, claimed that any action taken by the judgment-debtor including execution of agreement to sell dated 27.2.2004 is of no legal significance.

3. Challenging the impugned order, whereby objection petition preferred by the petitioner was dismissed, the objector (now revisionist- Yag Dutt 2014.05.09 10:50 I attest to the accuracy and integrity of this document CR No.109 of 2013 -2- petitioner) had claimed to be exclusive owner in possession of the property in dispute by way of a family settlement, further alleging that the judgment- debtor was having no concern with the same. After receiving evidence in the execution petition, the executing court finding it to be of no merit had dismissed the objection petition.

4. Hearing has been provided to counsel for the parties while going through the impugned order as also the documents placed by the parties on the paper book.

5. Decree under execution is of 27.5.2006. Genesis of litigation in the said decree was an agreement to sell of 27.2.2004 executed by JD Ranjit Singh (real brother of the objector) in favour of decree holder Sajjan Singh. The suit was for specific performance of this agreement to sell where defendant Ranjit Singh had lost the litigation.

6. Now the petitioner brother has come forward to salvage the sinking ship of the judgment-debtor claiming that since the judgment-debtor had no right, title or interest in the property in litigation, neither agreement to sell dated 27.2.2004 executed by him nor the decree passed in favour of the decree holder, is of any legal significance.

7. When the petitioner-objector was called upon by the executing court to sustain his pleadings of being owner of the property which was subject matter of execution of the decree, he could not produce any evidence worth acceptance and thus, his objection petition was found to be hollow and being of no merit, was dismissed.

8. If entire case of the petitioner is taken for evaluation where he claims himself to be one of the seven sons of Babu Ram and further that the property was owned by Babu Ram his father, who had bequeathed the same in favour of his five sons while debarring two others out of seven including Yag Dutt 2014.05.09 10:50 I attest to the accuracy and integrity of this document CR No.109 of 2013 -3- the judgment-debtor and thereafter, in a family partition, he had become absolute owner of the same, it runs as a fiction since there is no evidence worth the name to support this plea. During the course of proceedings before the executing court where objection petition of the petitioner was treated almost as a separate suit and the parties were allowed to produce their entire evidence in support of their rival claims, the petitioners had not been able to produce any evidence firstly to show that his father was the owner of the property and then, there is no evidence that it was subject matter of testamentary succession by way of Will. He also could not produce any evidence regarding settlement of the property in dispute in his favour sequel to some family partition.

9. It is worth notice that even at the time of specific performance of the agreement to sell dated 27.2.2004 calling upon the objector (now petitioner) to produce copy of family partition or any document showing title of the property resting with him, the objector had remained completely blank. Rather, the objector took a somersault when he came forward with a plea that the family partition was oral one; details of the said family settlement such as date, month or year also had been omitted to be given. Objector (now petitioner) had remained satisfied in making reliance only on copy of mutation. Mutation does not confer title. There is neither any evidence that the property was owned by father of the petitioner nor the alleged Will from him in favour of the objector has been produced. Similarly, there is complete black-out in bringing evidence and circumstances to show that thereafter, there was any family partition resulting in settlement of the property in dispute in favour of the petitioner to the exclusion of the judgment-debtor.

10. It is also noteworthy that claim of the petitioner that JD Ranjit Singh was having no right or title in the property in dispute was negated by him himself when it was conceded by him that JD Ranjit Singh was living Yag Dutt 2014.05.09 10:50 I attest to the accuracy and integrity of this document CR No.109 of 2013 -4-

separately in a Haveli and the land owned by him was independent, set apart and different from the land owned by the petitioner and further that the petitioner had nothing to do with the land and property of JD Ranjit Singh. During his cross-examination, when objector Bhagwan Dass appeared as RW1), he has conceded that he had no particulars of ownership of the property in dispute. Relevant portion of the impugned order, wherein meticulous perusal and appraisal of the testimony of objector Bhagwan Dass (RW1) was made by the lower court, is as below: In cross-examination, he has stated that he has no knowledge as to how much land was inherited by him after the death of his father. He further stated that he was residing in separate Haveli. He further stated that he has no concern with Ranjit Singh. He further admitted that the land given by his father to Ranjit Singh was independent and he has no concern with the same. He further stated that he had no knowledge of the measurement of the said land. He further stated that he had no record with regard to ownership of the property in dispute in his favour. He further stated that he cannot produce title deed of the property in dispute in his favour if opportunity is granted to him.. 11. Merely because Bui Dass (RW2), Gurdial Singh (RW3) and Vijay Kumar (RW4) have stepped into the witness box in support of claim of the objector, ipso facto does not give any support to the cause of the defendant. In execution petition, by way of objection petition under Order XXI Rules 97, 98, 101 and 102, prayer for setting aside decree dated 27.5.2006 could not have been made by the petitioner-objector.

12. Learned counsel for the objector has urged that when the judgment-debtor was neither owner nor he could further sell the property, decree in favour of the decree-holder is of no legal value. Citing Amrik Singh Versus Smt. Surjit Kaur and others 2008(2) RCR (Civil) 465 (P&H), Amrit Singh Vs. Tarlok Singh and others 2004(3) RCR (Civil) 447 (P&H) and Mallappa Adivappa Hadapad Vs. Smt. Rudrawwa and others 2004(1) Yag Dutt 2014.05.09 10:50 I attest to the accuracy and integrity of this document CR No.109 of 2013 -5- RCR (Civil) 174 (Karnataka), it is claimed that if a purchaser has not satisfied himself with the ownership of his vendor by going through the relevant record, he cannot claim himself to be a bonafide purchaser.

13. When the petitioner has made absolutely no efforts to fix identity of the suit land with the land which was subject matter of the Will allegedly in his favour as co-owner and has not proved any family settlement propounded by him in his favour, it is difficult to pronounce ownership of the property in dispute as having rested with the petitioner.

14. Keeping in view the totality of facts and circumstances of the case, the petition being without any merit is dismissed.

15. Since the proceedings in the execution petition are taking time, the execution court would make sincere efforts to dispose of the matter within a period of three months from the date of receipt of certified copy of this order.

16. Nothing expressed above shall have any bearing on the merits of the case. (Dr. Bharat Bhushan Parsoon) Judge May 08, 2014 'Yag Dutt' 1. Whether Reporters of local papers may be allowed to see the judgment?. Yes 2. Whether to be referred to the Reporters or not?. Yes 3. Whether the judgment should be reported in the Digest?. Yes Yag Dutt 2014.05.09 10:50 I attest to the accuracy and integrity of this document

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