

Lachmi Devi Vs. Gurcharan Singh

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Court : Punjab and Haryana

Decided On : Apr-27-2005

Reported in : (2007)146PLR656

Judge : Harjit Singh Bedi, J.

Appellant : Lachmi Devi

Respondent : Gurcharan Singh

Disposition : Petition dismissed

Judgement :

Harjit Singh Bedi, J.

1. This petition is directed against the order of the Executing Court dated 18.3.1993, whereby the objections filed against the judgment of the Rent Controller dated 12.8.1985 ordering ejectment, have been dismissed.

2. The facts of the case are indeed somewhat startling and betray the petitioner(s) in a most unbecoming manner, as they have managed to delay the execution proceedings for over twenty years. The property in question is situated in Hoshiarpur in the State of Punjab. One Parduman Singh, who was the owner of 10 marlas of land, sold approximately 6 marlas to Gurcharan Singh, vide registered sale-deed dated 12.8.1977. As the property had been partly built upon, it had been

allocated Municipal House No. 385. Admittedly, Joginder Pal son of Lachmi Devi petitioner was a tenant in some portion of this property. Gurcharan Singh thereafter filed an application for ejectment against Joginder Pal, which was allowed on 12.8.1985. The appeal filed by Joginder Pal and Civil Revision No. 1243 of 1986 before this Court too were dismissed and the order of ejectment was maintained. It also appears that Lachmi Devi and her three sons, which included Joginder Pal aforesaid, purchased the remaining 4 marlas of land from the attorney of Parduman Singh, namely, Ved Parkash vide sale-deed dated 2.5.1988. It is the case of the petitioner herein that this property was identified in the municipal record as 374-A. Gurcharan Singh having thus got an order of ejectment of the decree. Khushi Ram, Joginder Pal's father filed an objection petition to this application, which was dismissed on 14.10.1986 with the observation that no house bearing No. 374-A existed in the entire Mohalla. Khushi Ram thereafter (in 1987) filed a suit for permanent injunction seeking to restrain Gurcharan Singh from dispossessing him. During the pendency of these proceedings, Khushi Ram died and his legal heirs (who are the present petitioners), were brought on record. In the execution proceedings, which were then still pending, Ram Lal another son of Khushi Ram made a statement in Court that he was willing to deliver possession to the decree-holders and that a Local Commissioner be appointed for this purpose. The Local Commissioner submitted his report on 18.3.1987 with the finding that Ram Lal was in fact obstructing the execution of the decree and there was no house bearing No. 374-A. In the meanwhile, the suit filed by Khushi Ram was dismissed for non-prosecution. It appears that a second objection petition was filed by Ram Lal on 27.4.1988 and this too was dismissed vide order dated 24.11.1988 and it was categorically held that the possession of the disputed property had not been handed over to the decree-holder and that there was no property bearing No. 374-A and that the entire property had been purchased by Gurcharan Singh vide sale-deed dated 12.8.1977. It was also observed that where the property was sold by boundaries and not by measurement, the description by boundaries would prevail in case of a dispute between the two. It is the admitted position that Civil Revision No. 3101 of 1988 filed against the order dated 24.11.1988 was dismissed (in limine) vide order dated 15.12.1988 and a Special Leave Petition No. 1795 of 1989 filed before the Hon'ble Supreme Court too was

likewise dismissed in limine on 27.2.1989. In the meanwhile, a civil suit for permanent injunction was filed by petitioner Lachhmi Devi widow of Khushi Ram and mother of Joginder Pal claiming that they were owners of house No. 374-A which they had purchased through the attorney of Parduman Singh vide sale-deed dated 2.5.1988. An interim injunction was granted to the plaintiff-petitioner by the trial Court, but was subsequently vacated. The appeal and revision petition against the orders vacating the stay were also dismissed by the first Appellate Court and the High Court. Warrants of possession of the property in execution of the decree dated 12.8.1985 were thereafter issued by the Executing Court. A revision petition was again filed in this Court, which was dismissed on 11.7.1990 by Bahri, J. and it was observed that the execution could proceed only with respect to 6 marlas of land. Gurcharan Singh respondent herein approached the Supreme Court in Special Leave Petition No. 15557 of 1993 against this order which was dismissed with liberty to move the High Court to reconcile the order impugned with an earlier order passed by another Single Bench in Civil Revision No. 852 of 1993. In the meanwhile, the suit filed by Lachhmi Devi and others was dismissed in default on 6.9.1990. Yet another suit was filed by Lachhmi Devi and her sons and this was also dismissed on 10.11.1993 with some observations in favour of the petitioner, but ultimately on the ground that it was barred by the principles of res Judicata in view of the order dated 24.11.1988. An appeal was thereafter filed by the petitioner and in the appeal they withdrew the suit and filed a fresh one seeking a declaration that as they were not parties in the ejectment application or in any other proceeding, they were not bound by the decision and that they were owners in possession of 4 marlas of land pursuant to the sale-deed 2.5.1988. It is the admitted position that the said suit is still pending in the trial court.

3. The impugned order in the present revision petition arises out of the third objection petition filed with respect to the same dispute by Lachhmi Devi, who has since died, and her sons. This objection petition has been dismissed vide impugned order dated 18.3.1993 passed by the Executing Court.

4. Eight issues were framed in this matter. They are reproduced below:

1. Whether Joginder Pal JD has handed over possession of the tenancy premises and decree has been satisfied? OPO
2. Whether objector has purchased property from Parduman Singh and same is different from property purchased by Decree-Holders? OPO
3. Whether objector is bound by the decree? OPDH
4. Whether Decree-Holders are entitled to possession of more area than six marlas in the light of order of Hon'ble High Court dated 11.7.1990? OPDH
5. Whether the objection under Order 21 Rule 58 C.P.C. filed by the objector is not competent under law? OPDH
6. Whether the objector has no locus standi to file the objection? OPDH
7. Whether there has been previous litigation between the Decree-Holders and the objector? If so what is its effect? OPDH
8. Relief.

5. On issue No. 1, the Executing Court found that Joginder Pal had not handed over the possession of the tenanted premises to the decree-holder as there was no evidence to that effect. On issue No. 2, it was observed that property 374-A and 385 were in fact part of the same property and in the light of the fact that Gurcharan Singh had purchased the property prior in time to the 4 marlas purchased by Lachhmi Devi and her sons vide sale-deed dated 2.5.1988, no rights could be conferred on the objectors. It was also observed that as a consequence of the order dated 24.11.1988 of Shri A.K. Sharma, Addl. Senior Sub-Judge, Hoshiarpur made while dismissing one of the objection petitions that property No. 374-A and 385 were one property held that the present objection petition was barred by the principle of res judicata. On issue No. 3, it was found that as the objectors were not party to the ejectment order dated 12.8.1985, they were not bound by the same. On issue No. 4, it was observed that in the light of the fact that the property 374-A and 385 were in fact the same property, the decree-holders could not be debarred from taking possession of more than six marlas of land as

already ordered on 11.7.1990 in the earlier execution applications. The objection petition was accordingly dismissed.

6. Mr. K.S. Dadwal, the learned Counsel for the petitioner, has argued that in the light of the fact that the decree-holders themselves had purchased about 6 marlas of land, they were not entitled to any land beyond this area and that this plea of the objector had been accepted in the observations of S.P. Goyal and A.L. Bahri, JJ. in their orders dated 22.4.1988, 11.7.1990 and 16.11.1990. It has also been pleaded that the Executing Court having found that the objectors were not bound by the decree dated 12.8.1985, the objection petition ought to have been allowed on that short ground. It has finally been pleaded that as the title suit with respect to the ownership of 4 marlas of land was still pending in the civil Court at Hoshiarpur and that this suit was based not only on the area and description of the property as mentioned in the two sale-deeds, but also on the observations of S.P. Goyal and A.L. Bahri, JJ. with respect to the 6 marlas of the land that could be claimed by the respondent-decree holders, it was perhaps appropriate to await the decision of that suit before proceeding with this matter.

7. Mr. Amar Vivek, the learned Counsel for the decree-holders has, however, pointed out that as per the provisions of Order 21 Rule 101 of the Code of Civil Procedure, it was open to the Executing Court to go into all disputes with regard to the right, title and interest of the property in dispute and the pendency or otherwise of the civil suit at Hoshiarpur would not preclude this Court from determining the correctness or otherwise of the impugned order. In this connection, he has placed reliance on *Shree Nath v. Rajesh* : [1998]2SCR709 . He has also pointed out that where there was a discrepancy between the area given in a sale-deed or the description of the property, it was the description of property by way of boundaries, which was bound to prevail. It has further been pleaded that the case of *Joginder Pal* that he had handed over possession to the decree-holders soon after the ejectment application had been allowed, was a false statement as there was no tangible evidence to show that this had ever happened. He has highlighted that all the pleadings filed in various forum/courts or otherwise, the description of the property was given by boundaries and that even the decree dated 12.8.1985 had been drawn on that basis. He has finally urged that the efforts of the petitioner to

flout the decrees of the civil Courts, which they had obtained 20 years ago, had been upheld repeatedly in various forums and imposition of heavy cost should perhaps be ordered in such a case. In this connection, he has placed reliance on an unreported judgment of this Court in Bhupinder Kaur and Ors. v. Nirmal Singh and Ors. Civil Revision No. 2931 of 1995, decided on 6.11.1995.

8. The arguments advanced by the learned Counsel for the parties have been considered.

9. It would be seen that Gurcharan Singh had purchased the property on 12.8.1977 but till date has not been able to get the possession thereof. The petitioner Lachmi Devi, since deceased, her husband and her sons have repeatedly moved applications or filed suits in order to frustrate the execution of the orders of ejectment of the Rent Controller as would be evident from the facts already given above. Categorical findings of fact have been recorded time and again that there was no property in the Municipal record bearing No. 374-A and that the entire property purchased by Gurcharan Singh was bearing House No. 385, It is pertinent that at the first instance Khushi Ram husband of Lachmi Devi and father of Joginder Pal filed an objection petition with respect to the execution of the decree, which was dismissed on 14.10.1986 with the observation that there was no house bearing No. 374-A in the entire Mohalla. Khushi Ram thereafter filed a suit for permanent injunction seeking to restrain the decree-holders from dispossessing him, but during the pendency of the proceedings, he died and his legal heirs were brought on record. During these proceedings, Ram Lal another son of Khushi Ram made a statement in Court that he was willing to deliver the possession to the decree-holders and that a Local Commissioner be appointed for that purpose. A Local Commissioner was accordingly appointed. As per the report of the Local Commissioner Ram Lal was in fact obstructing the execution of the decree and there was no house bearing No. 374-A as alleged by him. The suit was ultimately dismissed for non-prosecution and no attempt was made to revive the same. A second objection petition filed by Ram Lal was also dismissed vide order dated 24.11.1988 with the observation that there was no property bearing No. 374-A and that the entire property had been purchased by the decree-holders vide sale-deed dated 12.8.1977 and in case of any dispute with regard to property

sold by boundaries and by measurement, the description by boundaries would prevail. Concededly petitions filed in the High Court and the Hon'ble Supreme Court against the order dated 24.11.1988 have been dismissed. Likewise a civil suit for permanent injunction claiming that they were owners in possession of House No. 374-A had been filed by Lachmi Devi and her sons. The application for ad interim injunction was, however, dismissed by the trial Court and the said order was upheld by the first Appellant Court and the High Court and the suit too was subsequently dismissed.

10. Mr. Dadwal, the learned Counsel for the petitioner has, however, argued that in some interlocutory proceedings, this Court had made an order on 11.7.1990 that the execution would proceed with respect to 6 marlas of land and no more and an S.L.P. filed by the respondent in the Hon'ble Supreme Court, too had been dismissed with the direction that the petitioner should move the High Court to reconcile the order dated 11.7.1990 with the earlier order passed in Civil Revision No. 852 of 1993. It has accordingly been argued that in view of these observations, the entire matter was open for reconsideration. There is no merit in this plea. The Courts, right from the trial Court to the High Court, have repeatedly held that there was no property bearing No. 374-A and that the entire property bearing No. 385 had been purchased by Gurcharan Singh. Mr. Dadwal has, however, drawn my attention to the judgment of Shri Harsh Mehta, Sub-Judge, IInd Class, Hoshiarpur, particularly to the finding recorded on issue No. 1, which was 'whether the plaintiffs were in possession of House No. 374-A as detailed in the head note of the plaint.' It has been urged that under this issue it has been held that the plaintiffs, i.e., Lachmi Devi and her sons were in possession of the aforesaid property. It is true that such observations had indeed been made, but it is equally true that the suit was ultimately dismissed as being barred by the principle of res judicata as this issue had already been decided in favour of Gurcharan Singh and others by the judgment dated 24.11.1988 passed by Shri A.K. Sharma, and it had been categorically held that property No. 374-A was in fact a part of property No. 385 and that Joginder Pal and others were not owners of the said property. In view of the above observations, it must be held that description by boundaries would prevail and as such, the finding that there was no property bearing No. 374-A must yet again be endorsed.

11. Mr. Dadwal has also placed reliance on the observations made by S.P.Goyal and A.L. Bahri, JJ. in Civil Revision No. 3825 of 1987 on 22.4.1988 that the decree-holder, Gurcharan Singh, was entitled to only 6 marlas of land and no more and that the Executing Court could not travel beyond the decree. This argument has no force. It would be seen that orders dated 22.4.1988 were passed by S.P. Goyal, J. in Civil Revision No. 3826 of 1997, which arose out of a rejection of a prayer of petitioner for ad interim injunction. Later however, the civil suit itself had admittedly been dismissed. It is the settled law that once the suit itself was dismissed. It is the settled law that once the suit itself was dismissed, all interim observations, if any, would stand merged in the final judgment. Moreover, the suit had been adjudicated on merits, while the observations made on 22.4.1588, were only prima facie. We find that the observations of Bahri, J. were also based upon the aforesaid observations of Goyal, J. dated 22.4.1988 and these had also been made in interlocutory proceedings. No benefit whatsoever of these orders can, therefore, be derived by petitioner. It is also clear from the record that the rent proceedings had started sometime in the year 1984 whereas the property had been identified by the boundaries as house No. 385 and his description had not been denied by the tenants and that it was only after the observations of S.P. Goyal and A.L. Bahri, JJ. that a sale-deed was executed on 2.5.1988 and that property No. 374-A was for the first time reflected in the municipal record for the year 1993-94. To my mind, there can be no doubt whatsoever that the sale-deed dated 2.5.1998 had been executed only in order to defeat the rights of the decree-holder, Gurcharan Singh, who, as already mentioned above, had purchased the property in the year 1977 and had obtained a decree on 12.8.1985. It is also clear from the judgment of the Hon'ble Supreme Court in Shree Nath's case (supra), while dealing with an application under Order 21 Rule 97, that the Executing Court can go into the objections raised by a person, who may not even be a party to the decree. It has been observed as under:

13. So far Sub-clause (i) of Rule 97 the provision is same but after 1976 amendment all disputes relating to the property made under Rules 97 and 99 is to be adjudicated under Rule 101, while under unamended provision under Sub-clause (2) of Rule 97, the Executing Court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule

98 the Court puts back a decree-holder in possession where the Court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the Court has to dismiss the decree-holder application. Thus even prior to 1976 right of any person claiming right on his own or as a tenant, not party to the suit such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property, on his own, if resists delivery of possession to the decree-holder the dispute and his claim has to be decided after 1976 Amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 than by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the Executing Court itself finally under Rule 101.

14. We find both either under the old law or the present law the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21, Rule 97, has to be decided by the Executing Court itself.' 12. The sequence of events narrated above reveals a very sorry state of affairs. Repeated efforts by Lachmi Devi and her family have led to a complete frustration of the legal process. In the course of Civil Revision No. 1389 of 1989 filed by Lachmi Devi and her sons against the decree-holders, a learned Single Judge of this Court, while dismissing the petition for ad interim injunction restraining the defendants from taking possession of house No. 374-A, observed that the plaintiff i.e. Lachmi Devi and her sons had not filed the suit with clean hands and they were abusing the process of the Court and though Gurcharan Singh had got a valid ejectment order in his favour the decree-holders had not been able to get possession on account of the delaying tactics of the petitioners and that if the trial Court found that they were unnecessarily obstructing the delivery of possession, it would be open to the Court to initiate proceedings under the Contempt of Courts Act and refer the matter to this Court for taking necessary action against the petitioners i.e. plaintiff Lachmi Devi and her sons. The Court in Shree Nath's case (supra), observed:3. In interpreting any procedural law, where

more than one interpretation is possible, the one which curtails the procedure without eluding the justice is to be adopted. The procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be allowed.

Despite the passage of 17 years from 12.8.1985, the decree-holders have not been able to get the possession of the property as this court had stayed the dispossession of the petitioner-judgment debtors, while issuing notice of motion on 31.3.1993. During the pendency of this matter, an effort had also been made by this Court to effect a compromise between the parties but the same did not succeed, exemplary costs must, therefore, be imposed as already indicated above.

13. To my mind, therefore, this petition must fail. It is accordingly dismissed with costs of Rs. 10,000/-.

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