

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Civil Revision No. 126 of 2016.**

**Reserved on : 20<sup>th</sup> August, 2018.**

**Date of Decision: 31<sup>st</sup> August, 2018.**

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Saroj Bala

**.....Petitioner/JD.**

**Versus**

Ishwar Chand (since deceased) through his legal heirs

**...Respondents/DH.**

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

**For the Petitioner: Mr. Desh Raj, Thakur, Advocate.**

**For the Respondent: Mr. Vivek Singh Attri, Advocate.**

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**Sureshwar Thakur, Judge.**

The decree holder's petition, for, a direction being pronounced, upon, the respondent/petitioner herein, to, through a registered of conveyance, alienate her ¼<sup>th</sup> share, borne in the suit property, bearing Khasra Nos. 532, 534, 536, 537, and, Kh. No. 538, total measuring 81-06 sq. meters, corresponding, to, new Khasra Nos. 1005, 1007, 1008, 1009, 1010, situated in Mohal Ranital, Nahan, District Sirmaur, stood, decreed by the learned trial Court, and, the apt decree

rendered by the learned trial Court, has, uncontrovertedly acquired conclusivity.

2. The decree holder/respondent herein, proceeded to, hence put to execution, the, conclusive binding decree, recorded by the learned trial Court, by his casting thereof, an, execution petition. The proposed sale deed for its, hence, being ordered, to be completely executed, and, registered before the Sub Registrar concerned, was tendered by the decree holders, before the learned executing Court. However, the learned executing Court, had, after paragraph No.1, of, the apt draft of the sale deed, ordered for incorporation therein, the, hereinafter extracted contested recitals:-

“the suit was decreed for selling  $\frac{1}{4}$ <sup>th</sup> share of the dwelling house detailed in Khasra Nos. 532, 534, 536, 537 and 538 which are now corresponding Khasra Nos. 1005, 1007, 1008, 1009 and 1010. The partition was entered between the parties and as per final decree shit land was partition and possession was give qua khasra Nos. 532, 5436, 537, 534/1, 534/2 and 534/3 to DH Ishwan Chand. Therefore, there was no need to purchase the same. Further more, the share which was in possession of the JD was agreed to sell by her to the extent of  $\frac{1}{4}$ <sup>th</sup> share to the DH and share was to be taken from the are which was left with her. Thus,  $\frac{1}{4}$ <sup>th</sup> share of area 1007/4

measuring 24.66 which is presently as Khasra Numbers 1696 is the land from which 1/4th share has to be given. This is in form of house. So entire house is to be given even if the area is less as DH had agreed that he is willing to accept 20.26 sq. meter instead of 24.66 sq. meters."

The afore referred mandate, as pronounced, in, the impugned order, is, forcefully contended by the learned counsel appearing for the judgment debtor, to rather beget transgression, of, the mandate, of, the apt conclusive, binding judgment, and, decree, where-within, rather the hereinafter extracted echoings hence stand borne :-

"It is ordered that the petition is allowed and accordingly respondent is directed to sell her 1/4th share in the dwelling house in dispute comprising Khasra Nos. 532, 534, 536, 537 and 538, total measuring 81-06 sq. meters corresponding to new khasra Nos. 1005, 1007, 1008, 1009 and 1010, situated in Mohal Ranital, Nahan, District, Sirmour, H.P. to the petitioner at the market value prevalent in Nahan town now a days."

Besides he contends, that, in making the aforesaid contested mandate, in, the impugned order, (a) the learned executing Court, has, infringed the solemn principle, as, anvilled upon the legal premise qua the executing court being barred to go behind the decree, rather it being enjoined, to, in its fullest letter, and, spirit, hence implement it or put it to coercive

execution. In making the aforesaid espousal, the learned counsel appearing for the judgment debtor, places reliance, upon, a verdict of the Hon'ble Apex Court rendered on 3<sup>rd</sup> January, 2014, in a case titled as ***Shivshankar Gurgar versus Dilip, bearing Civil Appeal No. 52 of 2014***, the relevant portion whereof, stands extracted hereinafter:-

“ It is settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in Deepa Bhargava and Another v. Mahesh Bhargava and others, [(2009)2 SCC 294] held thus:-

“9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing Court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is.....”

3. Per contra, the learned counsel for the decree holder, has placed reliance, upon, a judgment rendered by the Hon'ble Apex Court, in a case titled, as, ***Topanmal Chhotamal vs. Kundomal Ganga Ram and others***, reported, in ***AIR 1960 SC 388***, relevant paragraph No.4 whereof, stands extracted hereinafter:-

“4. At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe

the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment: see *Manakchand v. Manoharlal*, . In the plaint in the Agra suit, Suit No. 205 of 1949, not only relief was asked for against the firm, but also a personal decree was claimed against defendants 2 to 6. The said defendants inter alia raised the plea that a personal decree could not be passed against them because they were not made parties to the suit filed in the Chief Court, Sind, and were not personally served therein. The learned Civil Judge, Agra, in accepting the plea made the following observation:

"The defendants 2 to 6 were not made parties in Suit No. 533 of 1947 and were not individually served in that case. I think, therefore, the plaintiff cannot get a personal decree against defendants 2 to 6."

After citing the relevant passage from the decision of the Madras High Court in *Sahib Thambi Marakayar v. Hamid Marakayar*, ILR 36 Mad. 414, the learned Civil Judge concluded thus:

"That being the law there is no reason for construing the decree obtained by the plaintiff in Suit No. 533 of 47 as creating a larger liability against the defendant partners of the firm than to make the partnership property in their hands liable. I hold, therefore, that a personal decree against defendants 2 to 6 cannot be given but only as regards the property of the firm defendant No. 1 which may be found in their hands. The plaintiff is thus entitled to a decree for Rs. 12,140-1-0 with costs further and pendente lite interest at 3 p. c. p. a. against defendant No. 1 as may be found in the hands of defendants 2 to 6."

Then followed the decretal order. It is manifest from the pleadings and the judgment of the learned Civil Judge that when a personal decree was sought against respondents 2 to 6 on the same grounds that would have been open to the appellant for executing the decree against them under Order XXI, Rule 50, C. P. C., the learned Judge, for specific reasons

mentioned by him, refused to give the appellant the said relief and expressly confined it to the assets of the firm in the hands of the partners.”

4. The learned counsel appearing for the decree holder, hence, emphasizes (i) that with apt underlinings, standing, borne in ***Topanmal Chhotamal*** case (supra), qua, upon, the apt decree being ambiguous, (ii) thereupon, it being the solemn duty of the executing court to construe, it, by its hence looking into the pleadings, as, cast in consonance therewith. He submits, that, the contested mandate borne, in, the verdict assailed herebefore, (iii) being hence construable, to, in tandem therewith, rather hence standing rendered, upon, the Executing Court hence discerning, the, compatible therewith pleadings. (iv) Conspicuously, given, the, apt decree being *ex facie* ambiguous, (v) thereupon, reiteratedly in tandem therewith, tenable latitude accruing, vis-a-vis, the executing court to interpret, it, by its discerning, the, apt pleadings, and, thereafter, he submits, that, in the aforesaid befitting endeavour, the learned executing Court rather not going behind the decree nor it omitting to execute in the fullest, its truest nuance.

5. However, this Court cannot accept the afore made submission, of, by the learned counsel appearing, for the decree holder, as the, judgment, whereon he places reliance, is, strictly confined, vis-a-vis, the facts borne therein, and, with the extant factual matrix rather being distinguishable therewith, is, hence rendered inapplicable hereat, (a) factual matrix therein, rather makes, a, clear display qua the apt decree thereat hence, making the apt candid hereinafter extracted declarations:-

“ any such property of the firm M /s Kundomal Gangaram as may be found in the hands of defendants No.2 to 6.”

(a) and therein, the, Hon'ble Apex Court, hence, meteing deference thereto, and, also validating, the, pronouncement recorded by the Hon'ble High Court concerned, qua the concurrent therewith order of coercive execution, of, the decree, (b) whereunder, the property of defendant No.1 firm, as may have travelled into the hands, of, co-defendants No.2 to 6, was hence pronounced, to be, also executable thereagainst. The effect, of the Hon'ble Apex Court in the judgment relied, upon, by the counsel for the decree holder, rather validating the apt verdict rendered, by the Hon'ble High Court concerned, (c) whereunder, it in consonance with the apt mandate, borne in the decree, as, put to execution, had rather rendered an apt order, in, consonance therewith, (d) and, also obviously, in, the

concluding portion of its verdict, had also rendered an expostulation of law, qua the executing court being barred to go behind the decree, (e) is, of the executing Court being barred to impose, a, liability, upon, the JD, conspicuously beyond the mandate of the decree, put to execution. The afore conclusion, borne in the last paragraph, of, the verdict rendered in ***Topanmal Chhotamal*** case (supra), appears to stand overlooked by him, and, he has obviously hence faintly rested his submission, upon, paragraph No.4 of the verdict of the Hon'ble Apex Court, borne in ***Topanmal Chhotamal*** case (supra), (f) paragraph whereof, appears to stand recorded by the Hon'ble Apex Court, for discerning, from, the apt pleadings, the executability, of, the decree against the property of defendant No.1 firm, even when the apt properties, had travelled into the hands, of co-defendants No.2 to 6, and, hence the latter, stood, thereafter validly pronounced, rather in tandem with apt therewith recitals, borne in the apt decree, to be, amenable, for, ensuring apt realization(s). However, thereat imminently, even the discerning of the pleadings by the Hon'ble Apex Court, was apparently in strict consonance, with the mandate of the decree, and, was exercised merely, to clarify, the, mandate of the purported ambiguous decree. However,



even if the counsel for the DH, makes a submission before this Court, that, the extant decree put to execution, is ambiguous, and, thereupon, in consonance, with, paragraph No.4, of, the verdict of the Hon'ble Apex Court, rendered in ***Topanmal Chhotamal*** case (supra), it being amenable for this Court, to discern, from, the pleadings qua theirs carrying rather evincings, in, apt consonance therewith, (g) and, for hence erasing purported ambiguities besides for validating the impugned order, (h) yet this Court would not succumb to his submission, given in contradistinction, to, the judgement supra relied upon by him, wherein, occurred, a, clear mandate, vis-a-vis, the apt decree standing pronounced, against, the property of the firm M/s Kundomal Gangaram, and, it being further decreed, to be, also realizable, upon, the apt decretal property, hence, evidently travelling in the hands, of, defendants No.2 to 6, (I) whereas, rather hereat, the apt decree making, the, afore apt candid, and, unambiguous echoings, wherefrom, the corollary is, qua with the apt mandate of the apt decree, being markedly unambiguous, thereupon, no allusion, vis-a-vis, the apt pleadings is imperative, (j) nor when in the concluding paragraph, of, the verdict of the Hon'ble Apex Court, the executing Court, is, permitted to go behind the decree, and

further when hereat, there being no apt direction(s) in the apt decree, as, put to execution, rather hence bearing consonance with the verdict (supra), (k) thereupon, it was grossly impermissible, for, the learned executing Court, to , infract the mandate, of, the apt decree, given it being anvilled, upon, the pleadings, and, also the apt evidence reared by the decree holders, whereupon, rediscerning(s) or relookings into any part thereof, is obviously precluded. Consequently, the binding and conclusive decree, whereunder, the suit property was declared to be undivided, and, apt sale, qua 1/4th share in the dwelling house in dispute comprised in Khasra Nos. 532, 534, 536, 537 and 538, total measuring 81-06 sq. meters corresponding to new khasra Nos. 1005, 1007, 1008, 1009 and 1010, situated in Mohal Ranital, Nahan, District, Sirmour, H.P., alone comprised, the, apt executable decree, and, reiteratedly, in the learned executing Court, in making the hereinabove extracted contested underlined mandate, has, rather ex facie hence travelled behind the decree, and, also rendered a relief, which rather stood declined, vis-a-vis, the decree holder.

6. For the foregoing reasons, the instant petition is allowed, and, the order impugned before this Court is set aside. The parties are directed to appear before the learned trial

Court on 20<sup>th</sup> September, 2018, and, the learned executing Court, is directed to decide afresh the execution petition, within three months, from today. All pending application also stand disposed of. Records be sent back forthwith.

**31<sup>st</sup> August, 2018**  
(jai)

**(Sureshwar Thakur)**  
**Judge.**