

119 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

ESA-10-2021(O&M)

Date of decision : March 31, 2021

RAJENDER KUMAR

.....Appellant

Versus

HARENDER AND OTHERS

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Sharma -I , Advocate for the petitioner.

Mr. M.D. Khan, Advocate for respondents No. 1 and 2.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This Execution Second Appeal has been filed challenging order dated 26.07.2019 as well as order dated 15.01.2021 whereby third party objections filed by the appellant in execution proceedings initiated by the decree holders – respondents No. 1 and 2 have been dismissed. Execution of judgment and decree dated 17.08.2016 wherein suit for specific performance filed by respondents No. 1 and 2 against owner - respondent No. 3 was decreed, was sought by the decree holder, respondents No. 1 and 2. Third party objections were filed by the present appellant and one Raman Lal claiming possession over the suit property since 1997 as lessee on annual rent of Rs.20,000/- under the judgment debtor. It is further pleaded that in the year 2012, judgment debtor authorised Smt. Janki Devi to deal with the suit land and in terms of that authority, Smt. Janki Devi entered into an agreement of sale on behalf of the judgment debtor with the objectors i.e. present appellant and Raman Lal for sale consideration of Rs.80 lakhs, which was duly received by her in cash. Receipt in respect to the aforesaid payment was also stated

to be executed. It was further agreed that judgment debtor would execute and get the sale deed registered as and when the purchasers desired. They claimed to be in possession of suit land as lessee since 1997. It is averred that on 13.03.2018 the appellant came to know about passing of judgment and decree dated 17.08.2016 when the decree holder alongwith the officials came to the spot for execution of the warrant. It is further stated that the said judgment and decree dated 17.08.2016 has already been challenged by the objectors vide civil suit 'Raman Lal and others vs. M/s Aneja Agro Farm and others'.

Objections were filed by the present appellant and Raman Lal. The same were contested by the decree holder claiming that the suit land was never leased to the objectors in the year 1997 and neither were they in cultivating possession thereof. Decree holders prayed for dismissal of the objections.

Learned Executing Court vide order dated 26.07.2019, while dismissing the objections, observed that objectors were unable to produce anything on record to indicate their possession over the suit property since 1997 or that agreement to sell dated 18.12.2012 was executed by the judgment debtor in their favour. It is further observed that the objectors were unable to give details regarding any request that they had ever made for registration of the sale deed and suspicion was raised regarding the entire sale consideration of Rs.80 lakhs being given in cash, besides the appellant keeping mum over the issue for such a long time. Objections were, accordingly, dismissed while observing that there is nothing on record to even prima facie show that the objectors ever remained in possession of the suit property at any point of time. Appeal preferred by the present appellant was also dismissed by the learned Additional District Judge, Palwal vide decision dated 15.01.2021.

Aggrieved therefrom, this appeal has been filed by one of the objectors only.

Learned counsel for the appellant submits that the appellant should have been permitted to lead evidence in this case before final disposal of the objections filed by the appellant/objectors. Learned counsel for the appellant submits that manifest injustice has been caused while deciding objections filed by the appellant, in a perfunctory and summary manner. It is submitted that in terms of Order 21 Rule 101 CPC it was incumbent upon the Executing court to have decided the matter after permitting the appellant to lead evidence to substantiate his objections. It is, thus, prayed that this appeal be allowed.

At this stage, Mr. M.D. Khan, Advocate appears on behalf of respondents No. 1 and 2 and opposes the appeal while refuting the arguments raised by learned counsel for the appellant and submits that learned courts below have correctly passed the impugned decisions. Learned counsel further informs that warrant of possession has been duly executed and the execution petition has been disposed of on 16.03.2021. Moreover, independent suit filed by the appellant, it is stated, is still pending wherein interim relief was also denied. It is stated that the objectors can very well lead evidence in their civil suit which would be decided independently. It is, thus, prayed that this appeal be dismissed.

Heard, learned counsel for the parties.

It is a matter of record that judgment and decree dated 17.08.2016 was passed in favour of the respondent – decree holders (respondents No. 1 and 2) wherein their suit for specific performance was decreed on the basis of agreement to sell dated 08.11.2013 in respect to land measuring 68 kanals 5 marlas as described therein. Present appellant alongwith one Raman Lal filed objections in the execution proceedings claiming firstly to be lessees under the decree holder since 1997 on annual rent of Rs.20,000/-. Objectors also raised a plea that agreement to sell dated 08.11.2013 had been entered into with them by the judgment debtor through Smt. Janki Devi. Primary argument raised by learned

counsel for the appellant is that objections filed by the appellant and respondent No. 5 should not have been dismissed summarily without allowing them to lead evidence. It is to be noticed that both the learned courts below have concurrently held that the revenue record does not reflect the objectors to be in cultivating possession of the suit property. Learned counsel for the appellant is unable to deny that objectors were unable to point out any such revenue entry since the year 1997 to reflect their possession. In fact, the revenue record reveals the judgment debtor to be in cultivating possession of the suit land. Appellant did not produce any evidence on record to indicate that they were ever lessees under the judgment debtor. Reliance was sought to be placed merely on a report dated 13.03.2018 of Field Kanungo regarding cultivating possession of the objectors. Clearly, the objectors failed to even indicate any document to reflect their possession over the property in question. Furthermore, a sum of Rs.80 lakhs is claimed to have been paid by the present appellant and respondent No. 5 to Smt. Janki Devi in the year 2012. It is correctly observed by learned courts below that it is highly improbable for such a large amount of money to be paid in cash and neither was any documentary record adduced before the executing Court to even prima facie show from where objectors arranged this amount. At this juncture, it is considered gainful to refer to judgment of the Hon'ble Supreme Court in **Silverline Forum Pvt. Ltd. versus Rajiv Trust 1998 (3) SCC 723** wherein the Hon'ble Supreme court has held as under:-

“ When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such

questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. in the adjudication process envisaged in order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

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The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.”

In the case of **Bikram Singh versus Surjit Singh and others 2004**

**(4) RCR (Civil) 422**, this High Court while considering the judgment of the Hon’ble Supreme Court in **Silverline Forum’s** case (supra) observed as under”

“ In view thereof, it is apparent that question must legally arise between objector and the decree holder. Since it has been found that the objections raised by the petitioner do not raise any question, it was

not obligatory for the executing court to provide an opportunity to the petitioner to lead evidence.”

In the case of **Minakshi versus Gurcharan Singh Bharmra 2002 (2)**

**RCR (Civil) 323**, it was held that the executing Court is not bound to frame issues in every case and it is not incumbent upon the executing Court that it must put to trial every objections filed in the execution proceedings, which may be frivolous vexatious and only aimed at causing delay. In **Som Parkash v. Santosh Rani, 1996 (2) RCR (Rent) 270 : 1997 (1) PLR (Punjab) 89** this High Court after considering the provisions of Order 21, Rules 97 and 98 CPC, held that adjudication of objections does not mean that framing of issues is always necessary for the executing Court and the term ‘adjudication’ as used in Rules does not start and end with the framing of issues but it requires appreciation of the case of the objector and documents in support of such objections.

In the present case, objections have been raised on the ground of the appellant and respondent No. 5 being lessees under the judgment debtor since 1997. They also claimed execution of agreement to sell dated 18.12.20212 qua which admittedly no steps had ever been taken by the objectors for execution and registration of the sale deed. Equally undeniable is the fact that not even a single document was referred to much less placed before the learned courts below, to indicate possession of the objectors over the land in question as lessees under the judgment debtor. Moreover, even if they are accepted to be lessees of the judgment debtor, they would be bound by the decree against the admitted owner of the property in question. Furthermore, the objectors have admittedly filed a civil suit prior to the filing of the objections in the execution proceedings. They were denied interim relief and thereafter objections were filed. It is relevant to note at this stage that learned counsel for respondents No. 1 and 2 has stated that evidence in the civil suit be considered independently de hors the decision of the objection petition.

Keeping in view the facts and circumstances as above, in my considered opinion there is no ground whatsoever to interfere in this appeal.

Learned counsel for the appellant is unable to point out any infirmity or illegality in the impugned orders, which calls for interference in this appeal.

This appeal is accordingly, dismissed.

Needless to say, appellant is at liberty to lead evidence in the pending suit which necessarily shall be decided on the basis of the evidence so led by the respective parties.

March 31, 2021  
rts

(Lisa Gill)  
Judge

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