

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 120

Case No. : CR No. 7856 of 2018

Date of Decision : November 20, 2018

Randhir Singh (since deceased)
through his LR Petitioner

vs.

Man Mohan Jain (since deceased)
through his LR's and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Rajesh Khandelwal, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 15.12.2017 passed by the Civil Judge (Senior Division), Sonapat (for short – the Executing Court), through which the objections filed by the petitioner against the execution of judgment and decree dated 11.01.1993 have been dismissed. Also under challenge is the order dated 03.08.2018 passed by the Executing Court dismissing the application filed by the petitioner seeking recalling/review of the aforesaid order dated 15.12.2017.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that way back in the year 1985, respondents no.1 to 3 filed a suit seeking therein possession of land measuring 24 kanals 13 marlas situated in the area of Village Sultanpur,

District Sonapat (for short – the suit property). The case set up by the respondents/plaintiffs was that the suit property was owned and possessed by one Siri Chand. Vide lease deed dated 21.01.1963, Siri Chand gave the suit property on lease to Chandgi Ram. During the pendency of the aforesaid lease, through registered sale deed dated 16.09.1963, Siri Chand sold the suit property to Mahabir Parshad Jain. Chandgi Ram cultivated the suit property as a lessee firstly under the previous owner Siri Chand and then, after its sale on 16.09.1963, under Mahabir Parshad Jain. In the year 1964, the sons of Siri Chand namely Gulzari and Lakhi Ram filed a pre-emption suit which was decreed on 14.12.1964. Later, through sale deed dated 28.09.1965, Gulzari and Lakhi Ram sold the suit property to respondent no. 1 Manohar Lal Jain, who is the predecessor-in-interest of the respondents. However, the suit property remained in possession of Chandgi Ram, who continued to cultivate the same on behalf of its owner till 20.01.1983. After the period of lease in favour of Chandgi Ram came to an end in April 1983, he handed over the possession of the suit property to Manohar Lal Jain and thereafter, Manohar Lal Jain became owner in possession of the suit property.

On 13.03.1984, Gulzari, Randhir Singh, Rai Singh, Attar Singh and Krishan Kumar filed an application under Section 14(a) of the Punjab Security of Land Tenures Act, 1953 against Chandgi Ram seeking his ejectment from the suit property. Such application was contested by Chandgi Ram. In his written statement, Chandgi Ram submitted that the possession of the suit property had already been delivered by him to

Manohar Lal Jain, who was now the owner in the possession of the suit property. On the basis of such assertion made by Chandgi Ram, the aforesaid application was dismissed. Manohar Lal Jain being in possession of the suit property had harvested the crop and wanted to cultivate further but the predecessors-in-interest of Gulzari and Lakhi Ram, without any right, title or interest, forcibly entered into the possession of the suit property. A report in this regard was filed by him with the police resulting in proceedings under Section 145 Cr.P.C. Manohar Lal Jain died on 05.06.1985 and the contesting respondents are his successors-in-interest. On the ground that the suit property continued to be wrongfully mutated in favour of the predecessors-in-interest of Gulzari and Lakhi Ram and that they had illegally taken possession of the same, the predecessors-in-interest of the contesting respondents filed the afore-referred suit.

On being put to notice, the predecessors-in-interest of the petitioners, who were the defendants in the suit, appeared before the trial court and filed their written statement inter alia stating therein that the sale deed dated 28.09.1965, alleged to have been executed by Gulazari/Lakhi Ram in favour of Manohar Lal Jain, was illegal and forged.

The trial court framed issues including the issue as to whether the sale deed dated 28.09.1965 executed by Gulazari/Lakhi Ram in favour of Manohar Lal Jain was illegal and fictitious.

After sifting the evidence led by both parties, through judgment and decree dated 11.01.1993, the trial court decreed the suit filed by the predecessors-in-interest of the contesting respondents after returning a

specific finding that the sale deed dated 28.09.1965 executed by Gulzari and Lakhi Ram in favour of Manohar Lal Jain was a valid sale deed. Gulzari and legal heirs of Lakhi Ram including Randhir Singh, along with other co-defendants in the suit, challenged the aforesaid judgment and decree by way of an appeal which was dismissed by the Appellate Court on 03.06.1993, against which Randhir Singh and others filed a second appeal before this Court being **RSA No. 1438 of 1993 – Gulazari and others vs. Man Mohan Jain and others** which was also dismissed on 08.03.2010. Since the matter was not taken any further, the same attained finality.

In the meanwhile, on 03.02.1993 i.e. after the judgment and decree of the trial court dated 11.01.1993, the decree-holders filed an application before the Executing Court seeking execution of the aforesaid decree in their favour. However, since in the aforesaid Regular Second Appeal, this Court had granted interim stay, on the statement made by learned counsel for the decree-holders to the effect that he did not wish to pursue the execution application at that moment, the same was permitted to be withdrawn. After the dismissal of the second appeal, another application was preferred by the decree-holders seeking execution of the decree dated 11.01.1993. On being put to notice, Randhir Singh, predecessor-in-interest of the petitioner, filed objections before the Executing Court, which through order dated 14.09.2015, were dismissed. In the year 2013, Randhir Singh expired. Thereafter, on 02.03.2016, Dhan Kaur, who was Randhir Singh's widow, filed objections before the Executing Court against the execution of the decree dated 11.01.1993. In the meanwhile, the petitioner along with

her son Rajesh and other legal heir of Lakhi Ram, filed a suit titled as **Rajesh and others vs. Rai Singh and others** through which they sought a declaration to the effect that the decree dated 11.01.1993 as also sale deed dated 28.09.1965 were null and void on the ground that the sale deed was a result of fraud and misrepresentation. In her objections, Dhan Kaur had primarily stated that the sale deed dated 28.09.1965, which formed the basis of the suit filed by the predecessor-in-interest of the respondent, was a result of fraud and since a civil suit in that regard filed by them was pending, the Executing Court should stay its hands till the trial court finally opines on the civil suit filed by them. Through order dated 15.12.2017, the Executing Court dismissed the objections filed by Dhan Kaur. Thereafter, Dhan Kaur filed an application seeking review/recalling of order dated 15.12.2017, which was also dismissed by the Executing Court on 03.08.2018. It is in these circumstances that the present revision petition has been filed before this Court to challenge therein the aforesaid orders dated 15.12.2017 and 03.08.2018.

Learned counsel for the petitioner submitted that in view of withdrawal of the earlier execution application filed by the respondents, the second execution application, in which the impugned orders have been passed, was not maintainable as at the time of withdrawal of the earlier execution application, no liberty had been sought and got by them for filing a fresh application; that the respondents were guilty of suppression of material facts as in their second execution application, they did not disclose the factum of filing of first execution application; that as per Order 21 Rule

29 CPC, in view of the stay order granted by the trial court in the suit preferred by the petitioner and other legal heirs of Lakhi Ram, the Executing Court should have stayed its hands and that the trial court rejected the objections filed by Dhan Kaur only on the ground that the objections filed by her late husband had been dismissed.

Even after 33 years of filing of their suit, the respondents are still waiting to take possession of the suit property and this is in spite of the fact that their suit was decreed by the trial court on 11.01.1993; the petitioner's appeal against such judgment and decree was dismissed by the Appellate Court on 03.06.1993; their Regular Second Appeal also met the same fate as their appeal on 08.03.2010 and that such proceedings thereafter attained finality.

Before the trial court, Randhir Singh (the predecessor-in-interest of the petitioners) had specifically raised an issue that no sale deed dated 28.09.1965 was executed by Gulzari and Lakhi Ram in favour of Manohar Lal Jain and that such sale deed was a result of forgery. The trial court framed a specific issue as to whether the sale deed dated 28.09.1965 was illegal and fictitious and after sifting the evidence led by both the parties, came to a categoric finding that the sale deed dated 28.09.1965 was valid. Appeal filed by Randhir Singh against such finding was dismissed by the Appellate Court on 03.06.1993 and Regular Second Appeal filed by him against the above findings was also dismissed by this Court on 08.03.2010. Since the matter was not taken up any further, it attained finality.

In spite of the above categoric findings with regard to the

validity of the sale deed dated 28.09.1965, during the execution proceedings initiated by the respondents seeking therein possession of the suit property, husband of the petitioner – Randhir Singh filed objections primarily questioning therein the validity of the sale deed dated 28.09.1965. These objections were dismissed by the Executing Court. After Randhir Singh's death, his wife Dhan Kaur filed objections before the Executing Court. After Dhan Kaur had filed the aforesaid objections, she along with other legal heirs of Lakhi Ram filed an independent suit seeking therein a declaration to the effect that the decree dated 11.01.1993 as also the sale deed dated 28.09.1965 between Gulzari and Lakhi Ram on one side and Manohar Lal Jain on the other be declared null and void on the ground that the same were a result of fraud. Dhan Kaur then moved the Executing Court to stay the execution of the decree dated 11.01.1993 during the pendency of the aforesaid suit.

Once the issue with regard to validity of the sale deed dated 28.09.1965 had been raised and decided through judgment and decree dated 11.01.1993 and such findings had attained finality, the Executing Court rightly did what it was supposed to do i.e. to execute such decree.

The submission made by learned counsel for the petitioner that the execution application preferred by the respondents was not maintainable in view of the withdrawal of the earlier execution application fails to impress me. It is not disputed that the respondents had filed their first execution application on 03.02.1993 i.e. soon after the passing of the decree dated 11.01.1993 and had sought to withdraw the same on

16.04.1994 i.e. after this Court in the Regular Second Appeal preferred by Randhir Singh had granted interim stay. This is also reflected in the statement of the learned counsel appearing for the respondents before the Executing Court on the basis of which such execution application was permitted to be withdrawn wherein the counsel had specifically stated that he did not want to continue with the execution application “at that moment”. Thus, the first execution application filed by the respondents was after the decree dated 11.01.1993 had been passed in their favour. However, since this Court had granted interim stay in the Regular Second Appeal preferred by Randhir Singh, the same, at that moment, was rightly sought to be withdrawn as it was but proper for the parties as also the Court to await the final decision to be rendered in the Regular Second Appeal preferred by Randhir Singh.

So far as the argument of learned counsel for the petitioner with regard to the respondents having not approached the Executing Court with clean hands for having not disclosed the final outcome of earlier execution application is concerned, a perusal of the objections filed by the petitioner before the Executing Court shows that it has simply been stated therein that the decree-holder has not come to the Court with clean hands and has suppressed material facts. No details with regard to such objection are forthcoming and the so-called objection by the petitioner is vague.

Irrespective of the above, the execution application filed by the respondents in the year 1993 was withdrawn in view of the stay order granted by this Court and was rightly not pursued by them as proprietary

demanding that they and the Executing Court should wait for the outcome of the proceedings pending before this Court especially in view of the interim stay granted by this Court.

Even otherwise, since the earlier execution application was not pursued by the respondents, in view of the above facts, the respondents would gain nothing by suppressing such fact and also that nothing hinged on the same as no decision on merits had been rendered by the Executing Court on the first application preferred by the respondents. Further, both parties were well aware of the withdrawal of the first execution application as the same had been withdrawn in their presence.

Thus, in the peculiar facts of the present case, the above argument of the learned counsel for the petitioner does not warrant acceptance.

The judgment of the Hon'ble Supreme Court relied upon by counsel for the petitioner in **Anil Kumar Singh vs. Vijay Pal Singh and others – JT 2018 (1) SC 326** has no application to the facts of the present case as that case pertained to withdrawal of a suit without liberty, whereas in the present case, what was withdrawn was an application filed by a decree-holder before the Executing Court when the decree, the execution of which was being sought, had been stayed by a superior Court on appeal and that at the time such application had been withdrawn, learned counsel for the applicant had specifically stated that he was withdrawing the application “at that moment”.

The reliance of the learned counsel for the petitioner on the

interim order dated 19.05.2017 passed by Civil Judge (Senior Division), Sonapat in the civil suit preferred by the petitioner and others being **Rajesh etc. vs. Rai Singh etc.** also is misconceived as in those proceedings, learned counsel for plaintiffs had argued before the Court that since objections by the judgment-debtors were still pending before the Executing Court and no warrants of possession had been issued, the Court should grant interim stay. After considering the entire matter on merits, as also the arguments raised on behalf of plaintiffs, the Court passed specific orders that the defendants therein, who are the respondents in the present petition, were entitled to take possession of the suit property only in due course of law and through the present execution proceedings, that is exactly what the respondents seek to do as they have not taken forcible possession of the suit property. Rather, they have contested the matter before the Executing Court and are still waiting for the issuance of warrants of possession so that they can ultimately bear the fruits of the decree passed in their favour over 25 years ago, which had attained finality over 08 years ago.

So far as the submission of learned counsel for the petitioner with regard to non-application of mind by the Executing Court in passing of the impugned orders is concerned, the same also fails to cut any ice with me. A perusal of the impugned orders reveal that all the issues raised by the petitioner have been discussed and opined upon by the Executing Court in its order dated 15.12.2017 and the application filed by the petitioner seeking recalling of such order has also been considered and disposed of through a reasoned order. In the course of deciding the petitioner's objections, the

Executing Court has specifically and rightly held that so far as the issue raised by the petitioner with regard to the sale deed dated 28.09.1965 being a document tainted by fraud is concerned, the same had already been considered and decided by the trial court in its judgment dated 11.01.1993, which had attained finality and therefore, the Executing Court could not go beyond the same.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 20, 2018

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether reportable ?</i>	<i>Yes/No</i>