

(2013) 07 P&H CK 0362
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1048 of 2000

Bairagi Thakurdwara Chak Kataru	Vs	APPELLANT
Hans Raj and Another		RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 07 P&H CK 0362

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Ranjit Saini, for the Appellant; Vijay Pal, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Decree-holder (DH) Bairagi Thakurdwara Chak Kataru has filed this revision petition u/s 115 of the CPC (in short-CPC) impugning order dated 18.12.1999 passed by learned Executing Court, thereby allowing objection preferred by respondents/judgment-debtors (JDs) - Hans Raj and his son Sandesh Chand in the execution proceedings and thereby dismissing the execution petition filed by petitioner DH. Objection raised by respondents that petitioner DH is not a juristic person, and therefore, the decree passed in its favour, which is sought to be executed, is null and void, has been upheld by the Executing Court.

2. I have heard counsel for the parties and perused the case file.

3. Counsel for the respondents, relying on judgment of Lahore High Court in the case of AIR 1928 375 (Lahore) (as also relied on by the Executing Court), contended that Thakurdwara is not juristic person, and therefore, decree in its favour is nullity.

4. The aforesaid contention cannot be accepted in the facts and circumstances of the instant case. In the reported case, of course it was held that Thakardwara (Pheru Mal of Amritsar) was not a juristic person. However, this finding was

recorded in Regular First Appeal against judgment and decree of the trial court. In the instant case, decree has already been passed by the Court and the said decree is sought to be executed. In execution proceedings, respondents-JDs could not have raised objection in this regard. They should have raised this objection during trial of the suit. No such objection should be allowed to be raised by JDs in the execution proceedings.

5. In addition to the aforesaid, in the case of Thakardwara (Pheru Mal of Amritsar) (supra), the suit had been filed through Manager, who could not have filed the suit in his own name, but in the instant case, the suit on behalf of petitioner Thakurdwara was filed through its Mahant and since Mahant could have filed the suit in his own name as Mahant of Thakurdwara, for this added reasons also, the decree in the instant case cannot be said to be null and void. Resultantly, I find that the impugned order of the Executing Court, dismissing the execution petition on the aforesaid ground, suffers from illegality and jurisdictional error. Accordingly, the instant revision petition is allowed. Impugned order passed by the Executing Court is set aside. Objection petition filed by the JDs/respondents stands dismissed. The Executing Court shall now proceed with the execution proceedings, in accordance with law. Parties are directed to appear there on 20.08.2013.