

(2012) 05 P&H CK 0119
In the Punjab And Haryana At Chandigarh
Case No : ESA No. 24 of 2012

Gurcharan Singh	Vs	APPELLANT
Kulwant Singh and Others		RESPONDENT

Date of Decision : 31-05-2012

Acts Referred:

Citation : (2012) 05 P&H CK 0119

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

Bench : Single Bench

Advocate : S.C. Thatai with Mr. Nitin Thatai, for the Appellant;

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 6624-C of 2012

1. For reasons mentioned in the application, which is accompanied by affidavit, delay of 31 days in filing the appeal is condoned.

CM No. 6625-C of 2012

Allowed as prayed for.

CM No.6626-C of 2012

2. The application is allowed and Annexures A-1 to A-16 are taken on record, subject to all just exceptions.

ESA No. 24 of 2012

3. Gurcharan Singh one of the objectors has filed this execution second appeal having failed in both the Courts below.

4. Suit filed by respondent No.1-Kulwant Singh against respondent No.2 Dalip Singh was decreed for possession of suit land by specific performance of

agreement to sell. Respondent No. 1-decree holder (DH) filed execution petition against respondent No. 2-judgment debtor (JD). In the execution petition, appellant along with his brother Surinder Pal Singh and sister Paramjit Kaur (respondents No.3 and 4 herein), who are sons and daughter of respondent No.2-Dalip Singh (JD), filed objections alleging that the impugned agreement is result of fraud and impersonation and the impugned agreement was not signed by respondent No.2-JD and also was not signed by the witness Paramjit Singh by whom it purports to have been signed. It has been pleaded that property being ancestral, objectors (appellant and respondents No.3 and 4) have right therein.

5. The objections were resisted by the DH. Pleas taken in the objections were controverted.

6. Learned Executing Court i.e. Civil Judge (Junior Division), Jagraon vide order dated 15.02.2005 dismissed the objections filed by appellant and respondents No.3 and 4. Appeal against the said order preferred by Gurcharan Singh-objector only has been dismissed by learned Additional District Judge, Ludhiana vide order dated 16.01.2012. Feeling aggrieved, Gurcharan Singh-objector has filed this execution second appeal.

7. I have heard learned counsel for the appellant and perused the case file.

8. Counsel for the appellant vehemently contended that the decree had been obtained by respondent No.1 by fraud and, therefore, the decree is nullity. Reliance in support of this contention has been placed on judgment of Hon"ble Supreme Court in the case of S. P. Changalvaraya Naidu (dead) by LRs versus Jagannath (dead) by LRs reported as 1994(1) RRR 253. It was pointed out that Paramjit Singh alleged witness of the agreement was abroad when the agreement was allegedly executed. However, this contention cannot be raised or entertained in execution proceedings. Such a plea could be taken and adjudicated in the suit and not in the execution proceedings. Moreover, this plea cannot be raised by objectors who are third party. At best, this plea could be raised by the judgment debtor-respondent No.2.

9. Respondent No.2 was recorded to be owner in possession of the suit land in revenue record. He entered into the agreement to sell the suit land to the plaintiff-respondent No.1. Suit of respondent No.1 against respondent No.2 has been decreed. The decree has been upheld upto Hon"ble Supreme Court after hot contest. It cannot be said that respondent No.1 has obtained the decree in collusion with respondent No.2. On the other hand, respondent No.2 is none else but father of all the objectors. Respondent No.2 having lost up to Hon"ble Supreme Court has now set up his sons and daughter to file objections so as to obstruct, delay and thwart the execution of the decree. This is not permissible. For reasons aforesaid, I find no merit in the instant second appeal. Impugned orders of the Courts below do not suffer from any perversity, illegality or jurisdictional error. The appeal is accordingly dismissed in limine.