

(2004) 03 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 920 of 1984

Kalji Singh (Died) and Others	Vs	APPELLANT
Sant Lal (Died) and Others		RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2004) 137 PLR 325 : (2004) 2 RCR(Civil) 807

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Mukul Aggarwal, for the Appellant; Prabodh Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.—This Civil Revision has been directed against the judgment and order dated February 28, 1984 whereby the objection petition filed by the judgment debtors (the respondents) was accepted and second execution application filed by the petitioner (since deceased) was dismissed by the learned Executing Court.

2. The brief facts are that a suit for possession by way of pre-emption filed by Sarvshiri Sadhu Singh and Lila Singh sons of Udey Singh against Sant Lal and others was dismissed by Sub Judge, Dadri vide his judgment dated October 25, 1968 but in appeal the same was partly decreed for the land measuring 10 Kanals 7 Marias by the learned first Appellate Court vide judgment and decree dated March 14, 1969 subject to payment of Rs. 1,475/- by the pre-emptors, Sadhu Singh and Lila Singh (decree-holders) sold the aforementioned land in favour of Kalji Singh present petitioner, but the possession was not delivered to him. Kalji Singh filed an application for execution of the decree dated March 14, 1969 so as to get the possession of the suit land purchased by him. One of the judgment-debtors (Gopi Ram son of Moti Ram) filed objections upon which the Executing Court framed certain issues including as to "whether Kalji Singh was

competent to get the decree executed passed in favour of Sadhu Singh and Lila Singh." The learned Executing Court vide order dated January 13, 1977 accepted the objection and relying upon the Full Bench judgment of this Court in the case of Hazari and Others Vs. Zila Singh and Others, held that the proper remedy for Kalji Singh was to file a separate suit and he could not execute the decree even by invoking Section 146 or Order XXI, Rule 16 of the Code of Civil Procedure. Consequently, the execution application was dismissed. The vendee (Kalji Singh) did not file any appeal against the afore-mentioned order and the same attained finality.

3. Subsequently, the view taken by the Full Bench of this Court in Hazari and others" case (supra) was dis-approved by the Hon"ble Supreme Court and their Lordships reversed the same in the case of Zila Singh and Ors. v. Hazari and Ors. 1979 P.L.J. 342. In the light of the view taken by he Hon"ble Supreme Court in Zila Singh"s case. Kaljit Singh filed second execution application on March 5, 1980. This execution application was also contested by the Judgment-debtors. The learned Executing Court vide its impugned order dated February 18, 1984, held that the previous execution petition was dismissed not on the ground of its maintainability due to some procedural defect, rather was dismissed after holding that the decree-holder was not competent to maintain the execution petition as per the law prevalent at that time and the said previous judgment having attained finality dismissed the second execution application, it being barred by the principle of res judicata.

4. I have heard Shri Ashok Aggarwal, learned Senior Counsel for the petitioners and Shri Prabodh Mittal, learned counsel for the respondents besides perusing the record.

5. Shri Ashok Aggarwal, learned Senior Counsel for the petitioners has argued that in view of the subsequent law laid down by the Apex Court, the execution application filed by a vendee who purchases decretal land is/was maintainable and that the first application having been dismissed for relying upon an erroneous law, could not constitute res-judicata and that successive execution applications were maintainable if filed within the prescribed period of limitation, so long as the decree for pre-emption remained unsatisfied.

6. On the other hand, Shri Prabodh Mittal, teamed counsel for the respondents argued that even a wrong decision of the Court of competent jurisdiction is as much binding between the parties as right one and it can be superseded only by the Appellate Court/Authority of through a prescribed procedure like Review and so long as such a decision is not set aside, it is very much binding inter-se between the parties and constitutes res-judicata. He has placed reliance upon judgment of the Supreme Court in State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, . Shri Mittal has further contended that the principle of res judicata applies to the execution proceedings as well, as held by the Hon"ble Supreme Court in Prem Lata Agarwal Vs. Lakshman Prasad Gupta and Others, and in Ganpat Singh (dead) by LRs v. Kailash Shankar and Ors. AIR 1982

S.C. 1443.

7. It is the conceded position that the order dated January 13, 1977 passed by the Executing Court dismissing the first execution application filed by Kalji Singh (since deceased) was never challenged and the same had attained finality. Though the aforementioned order was passed on the strength of Full Bench judgment of this Court in the case of Hazari and others" (supra) which was subsequently reversed by the Hon"ble Supreme Court of India in Zila Singh's case (supra), yet it was binding inter-se between the parties and constitutes res-judicata. The facts in Ganpat Singh's case (supra), were somewhat similar to the facts of the present case and in para 14 of the report, their Lordships held as under:-

"14. xxx We do not think that the decision of the Privy Council in Chandra Mani's case (supra) lends any support to the contention of the learned Counsel for the respondent decree-holder that an auction-sale can be set aside even on grounds other than those mentioned in Rules 89, 90 and 91. All that has been ruled in that decision is that in construing the meaning of the words "when the sale becomes absolute" in Article 180 of the old Limitation act, regard must be had not only to the provision of Order XXI Rule 92(1) of the Code, but also to the other material sections and orders of the Code including those which relate to appeals from orders made under Order XXI Rule 92(1). No provision of the Code has been pointed out to us under which a sale can be set aside apart from the provisions of Rules 89, 90 and 91 of Order XXI of the Code. There can be no doubt that when an application for setting aside the sale is made, the order passed by the executing court either allowing or dismissing the application will be final and effective subject to an appeal that may be made under the provisions of the Code. It is inconceivable that even though no appeal has been filed against an order dismissing an application for setting aside the sale, another application for setting aside the sale can be made without first having the order set aside. Such an application will be barred by the principle of res judicata. XX."

8. It may be added here that applicability of principle of res judicata in execution proceedings has now been expressly provided by the legislature itself by adding Explanation-VII to Section 11 of the Code of Civil Procedure.

9. For the reasons stated above, I find no legal infirmity in the order under challenge passed by the learned Executing Court. The Civil revision is, accordingly, dismissed but with no order as to costs.