

(2016) 01 P&H CK 0198
In the Punjab And Haryana At Chandigarh
Case No : CR No. 7761-2011 (O&M)

Manohar Lal

APPELLANT

Vs

Sunder Lal

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : (2016) 2 PLR 261

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Adish Gupta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.- CM-4261-CII-2012

For the reasons stated in the application which is supported by the affidavit, the delay of 137 days is condoned.

CM stands disposed of.

CM-30029-CII-2011

For the reasons stated in the application, the application is allowed subject to all just exceptions.

CM stands disposed of.

CM-2452-CII-2015

Prayer in this application is for imploding the applicant as petitioner No. 2.

For the reasons stated in the application, the application is allowed subject to all just exceptions.

CM stands disposed of.

Prayer in this revision petition is for setting aside the impugned order dated 20.02.2009, whereby the objections filed by the petitioner-objector against the execution of the ex parte judgment and decree dated 01.10.1994, have been dismissed.

2. Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioner-objector, submits that as per the agreement to sell dated 13.08.1985, the suit land was agreed to be sold to the respondent-plaintiff-decree holder. However, the parties did not perform the part of their agreement which necessitated plaintiff to file the suit for specific performance which ultimately resulted into passing of the ex parte judgment and decree aforementioned. However, during the pendency of the suit, vide two sale deeds dated 02.05.1990 and 07.10.1991, part of the property was agreed to be sold and exchanged hands, in these circumstances, the petitioner-objector filed the objections. The respondent-decree holder filed the first execution application dated 25.09.1996, during the pendency of the aforementioned execution application, the sale deed in respect of the suit property was registered. However, vide order dated 09.09.2006, the aforementioned execution application was withdrawn with liberty to file fresh one and the second execution application was filed on 28.02.2007, whereby the possession as per the judgment and decree was sought. He submits that second execution application was barred as per Article 136 of the Indian Limitation Act, 1963 (hereinafter called "the 1963 Act"). There is a complete bar from seeking the execution of the judgment and decree passed by the Lower Appellate Court, in essence, the respondent-plaintiff is forbidden in law to seek the execution beyond the period of 12 years. However, the Executing Court in a most fallacious manner, dismissed the objections. Against the aforementioned order, an appeal was filed which also met with the same fate. In support of his contentions he has drawn the attention of this Court to the judgment rendered by this Court in "M/s B.S. Industries Darapur and another v. State Bank of Patiala, Hoshiarpur and others", 2014(1) PLR 373.

3. Mr. Adish Gupta, learned counsel appearing on behalf of the respondent-plaintiff-decree holder, submits that once the trial Court had granted the permission vide order dated 09.09.2006 to file the execution application afresh, accordingly, the second execution application cannot be thrown out on the ground of limitation. In support of his contentions, he has relied the following judgments:-

1. "Government of Rajasthan and another v. Sangram Singh and others", AIR 1962 Rajasthan 43 (V 49C9(1)).
2. "Ramji Lal v. Het Ram and others, AIR 1978 Punjab and Haryana 233.
3. "Ghanshyambhai K. Sathwara v. Sonubhai Baliram Patil and others", AIR 2006 Gujarat 109.

4. "Avtar Singh and others v. Sat Pal and others", 2011 (2) Civil Court Cases 435 (PandH).
5. "Bharat Ram Mahato and others v. Ramesh Chandra Sharma and others", AIR 2007 (NOC) 1079 (Jhar.) : 2007 (1) AIR Jhar. R 368.
6. "Jalaur Singh v. Shromani Gurdawara Prabandhar", (1997) 116 PLR 72.
7. "Muthuveeranna Chettiar v. Muthuvenkatarama Chettiar and others", AIR (38) 1951 Madras 711.
8. "Paramjit Singh v. Mindo and others", 2007(1) Civil Court Cases 679 (PandH).
9. "Prem Chand v. Haryana State Industrial Development Corpn. Ltd. and others", 2006(2) RCR (Civil) 468.
10. "Ranchhodbhai Jerabhai v. Bai Rai, 1979 (2) GLR 575."

4. He further submits that the objections at the instance of the petitioner-objector in view of the provisions of Order 21, Rule 102 read with Section 151 of the Code of Civil Procedure (hereinafter called "CPC") were not maintainable as he acquired the ownership of the property, during the pendency of the suit and therefore, the aforementioned sale deeds are seriously barred by Doctrine Akin to the *lis pendens*. In support of his contentions he has relied upon the judgment rendered by the Hon'ble Supreme Court in *Mithan Lal v. Parvati and others*", AIR 1977 Allahabad 236 and *"Pentapati China Venkanna and others v. Pentapati Bangararaju and others"*, AIR 1964 Supreme Court 1454 (V 51 C 192), to contend that the subsequent previous execution application would be in continuation of the previous application and thus, there is no illegality and perversity in the order under challenge and prays for dismissal of the petition.

5. I have heard the learned counsel for the parties and appraised the paper book.

6. It would be apt to reproduce the order of 09.09.2006 (Annexure P7) which read thus:-

"Copy of order dated 9.9.2006.

In the court of Ms. Anita Dahiya, Additional Civil Judge, Sr. Divn. Faridabad.
Execution of Application.

1.

No. of Suit

Civil Suit No. 436 of 9.8.88

2.

Name of Parties

Sunder Lal v. Fakira

3.

Date of decree

1.10.1994

4.

Whether appeal preferred from decree

No.

5.

Payment of adjustment made

Nil

6.

Previous application if any

This is fresh application.

7.

Amount with interest

Decree for specific performance is to be satisfied.

8.

Amount of costs

Rs. 3680/-

9.

Against whom to be executed

Against J.D. Fakira

Present: Sh. M.L. Sachdeva, advocate for the DH.

Report of the reader dated 9.9.2006 perused who has executed the sale deed in favour of DH in terms of order dated 7.5.2006 passed by this court.

2. DH Sunder Lal has appeared in person and made his statement that the sale deed has been executed in his favour and he does not want to proceed with present execution petition and withdraws the same. He has also sought the permission for filing fresh execution petition for taking possession of the suit property. Heard. In view of the statement made by DH Sunder Lal, present execution petition is dismissed as withdrawn and he is allowed to file fresh execution petition for taking possession of the suit property. File be consigned to record room, after due compliance.

Announced

9.9.2006

Sd/-

Addl. Civil Judge (Sr.Divn)

Faridabad."

7. The submission that liberty granted to file the fresh execution application would not come in the way of the decree holder in seeking the possession, in my view, does not have any foundation to stand for the reason that the second execution application was filed beyond the period of 12 years. The Article 136 of the 1963 Act provides that the period of 12 years to seek execution of the decree. Nothing prevented the respondent-plaintiff decree holder to seek the execution in to of the judgment and decree dated 01.10.1994. No explanation has come forth of withdrawing the execution application vide order 09.09.2006. The order, aforementioned, cannot be said to be fall within the expressions of "statistical purposes", therefore, the ratio decidendi culled out by the Hon"ble Supreme Court in Pentapati China Venkanna"s case (supra) is not applicable to the facts of this case. As far as the judgments cited by Mr. Adish Gupta for decree holder-respondent, none of the judgments deals with the identical situation as in all the cases, the application was moved for reviving of the previous application. In the instant case, the second execution application dated 28.02.2007 does not envisage the whisper about the reviving of the previous execution application, though, it mentioned that as per the order dated 09.09.2006, the second execution has been filed. The liberty granted by the trial Court cannot not enlarge the period of limitation, in essence, such a liberty, in my view, is against the statute as valuable right of the other side, has been taken away.

8. Keeping in view the aforementioned findings, the impugned order declining the objections filed by the petitioner is set aside and the decree dated 01.10.1994 viz-a-viz the possession of the suit property by virtue of the petitioner-objector has become owner on account of the sale deeds aforementioned, has become un-executeable. Civil revision is allowed.