
(2016) 05 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3621 of 2016

Mehar Singh

APPELLANT

Vs

Shamsher Singh

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Constitution of India, 1950 — Article 227

Citation : (2016) 4 PLR 587

Hon'ble Judges : Mr. Shekher Dhawan, J.

Bench : Single Bench

Advocate : Mr. Sherry K. Singla, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Shekher Dhawan, J.—Present petition under Article 227 of the Constitution of India for setting aside the order dated 12.8.2010, passed by learned Civil Judge (Junior Division), Malerkotla, whereby objections under Order 21, Rule 58 CPC, filed by the petitioner were dismissed and order dated 1.3.2016, passed by learned Additional District Judge, Sangrur whereby appeal filed by the petitioner was also dismissed.

2. Learned counsel for the petitioner submitted that petitioner had purchased the land. Judgment debtor/respondent No. 2-Jarnail Singh is owner in possession of (a) 1/9 share of land/GM Roori and abadi measuring 2 bigha comprising in khata No. 556/908, 909, 910, 911, 912 and 913 bearing khasra No. 2183(0-1), 2184 (0-1), 2185(0-1), 2186(0-1), 4049/887 (0-5-10), 4049/887(0-8), 4049/887 (0-8) min, 4049/887 (0-12), situated at village Lasso, as per jamabandi for the year 1997-98. (b) 728/2903 share out of land measuring 2 bigha 18 biswa comprised of khewat No. 557, khatoni No. 116, khasra No. 4314/1357 (2-0), 4316/1358 (0-6), 4318/1359 (0-12), situated at village Lasso, Tehsil Malerkotla, as per the jamabandi for the year 1997-98. (c) 1/30 share in GM Chah measuring 11 biswa comprising khewat/khatoni No. 558/932, khasra No. 1356

(0-11), situated at village Lasso, Tehsil Malerkotla.

3. In view of above, it was prayed by respondent No.1/Decree Holder that land detailed in the above mentioned para be attached and sold in public auction for recovery of decretal amount. On that basis, learned Executing Court passed order for attachment of the land on 17.9.2002 and the same was put to sale.

4. Petitioner came to know that attachment of land measuring 2 bigha 18 biswa being 728/2903 share out of land measuring 2 bigha 18 biswa comprised of khewat No. 664, khatoni No. 978, khasra No. 4314/1357 (2-0), 4316/1358(0-6), 4318/1359(0-12), situated at village Lasso, Tehsil Malerkotla on the ground that petitioner has purchased the land from the Judgment Debtor vide three separate sale deeds bearing sale deed No. 2403 dated 26.11.1996 regarding land measuring 3 bigha to the extent of 60/2904 share out of total land measuring 145 bigha 4 biswa and sale deed No. 288 dated 9.5.1996 regarding land measuring 1 bigha 10 biswa i.e. 30-58 share out of 2 bigha 18 biswa and sale deed No. 2184 dated 3.11.1993 regarding land measuring 4 bigha 0 biswa to the extent of 2904 share out of total land measuring 145 bigha 4 biswa.

5. As per petitioner, he is in exclusive possession of the land, which was attached in the execution proceedings and the land bearing khasra No. 4314/1357(2-0), 4316/1358(0-6), 4318/1359(0-12), situated at village Lasso, Tehsil Malerkotla, District Sangrur.

6. However, Decree Holder submitted incomplete jamabandi for the year 1997-98 for the purpose of attachment and objection was raised by the petitioner. Both the Courts below have not considered the objections filed by the petitioner. Decree Holder failed to produce any evidence in the Court on the ground that respondent/Judgment Debtor sold the property. The Courts below failed to peruse the revenue record, which resulted into erroneous findings and passing of impugned orders, which are liable to be set aside.

7. Having considered the submissions made by learned counsel for the petitioner and appraisal of record of the case, this Court is of the considered view that the Courts below have already dealt with the matter. The Court below recorded observation that as per revenue record, the property was lying in the name of Judgment Debtor-Jarnail Singh and now the property has already been sold in auction by way of issuance of sale certificate as well. Petitioner has failed to prove before the Courts below and to make out any case before this Court that he was owner in possession of particular piece of property. Rather he had purchased only the share of property but not specific number. That way, he was entitled to claim share only and not to assert his claim on the basis of specific portion of the land and on that ground, objection petition was dismissed. However, the Courts below protected the rights of the present petitioner over the property of Jarnail Singh on the basis of sale deed having priority over the rights of subsequent purchaser. But the rights of auction purchaser shall come first. The Court below also made it clear that as and when partition takes place, Mehar

Singh, present petitioner, can always agitate and establish his prior right qua Jarnail Singh and claim of the petitioner is protected by the Court below while deciding the objections.

8. In view of above discussion, present petition stands dismissed, in limine, being devoid of any merit.