
(2007) 09 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Execution Second Appeal No. 527 of 2002

Pohlo Ram Sharma and Others

APPELLANT

Vs

Narinder Singh Randhawa and Others

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (2008) 1 CivCC 801 : (2008) 1 RCR(Civil) 442

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : H.S. Bakshi, for the Appellant; B.R. Mahajan, for the Respondents
Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This Execution Second appeal has been filed against the order dated 15.11.2000 passed by the learned executing Court as affirmed by the learned lower Appellate Court dismissing the objections filed by the appellants under Order 21 Rule 58 of the Code of Civil Procedure.

2. The appellant-objectors filed an objection petition against the attachment of land measuring 16 kanals 7 marlas comprised in Khasra No.72/16/4(0-16), 17/1(2-18), 25/1(3-3), 16/2(3-1) and 24(6-6) situated in village Udho Nangal, Tehsil and District Amritsar and sheller built upon the same under the name and style of Shakti Rice Mills.

3. It was pleaded by the objector-appellants that warrant of attachment in respect of the aforesaid property has been issued in the present execution proceedings. It was claimed that there is no Janta Rice Mills against whose property warrant of possession has been issued, rather there is Shakti Rice Mills at the spot. It was alleged that attachment was not legal and valid because the property in question did not belong to Janta Rice Mills. It was also claimed that the business is being run in the building constructed on the aforesaid land and

objector - M/s.Janta Rice Mills is a partnership concern with objector Nos. 1 to 4 as its partners. It was also claimed that the property was not liable to attachment in execution of the present execution as Judgment-debtor Nos.3 to 8 have no concern with the property in question and further the objectors were not parties to the suit in which the decree has been passed, therefore, the same was not binding on them. It was also the case of the appellants that the attachment has been obtained by suppressing the material facts and further the decree-holders were estopped by their act and conduct from filing the present execution application.

4. The objections were contested and preliminary objections were raised to the effect that the objectors being 3rd party have no right to challenge the decree and, therefore, the objections were not maintainable. It was claimed that the objectors had full knowledge about the pendency of the case in which the decree has been passed upto the Hon"ble Supreme Court of India. It was further claimed that original judgment-debtors-Hardial Singh and Tarlochan Singh filed SLP before the Hon"ble Supreme Court of India and after hearing the parties, the appeal was dismissed. Further objections were also taken. It was also claimed that Janta Rice Mills was working and carrying on business at the spot by merely changing the name as Shakti Rice Mills. It was also the case of the decree-holders that filing of objections was an attempt to misguide the Court by playing manipulation. It was also claimed that Shakti Rice Mills had no right, tile or interest in the property and they could not file any objections. It was also pleaded that objections have been filed at the instance of the original judgment-debtors - Hardial Singh and Tarlochan Singh. It was also maintained that the attachment order was legal and valid. It was claimed that as per report of the Local Commissioner, M/s.Janta Rice Mills is still in existence at the spot and M/s.Shakti Rice Mills has no right, tile or interest in the land in question. It was also claimed that the land for the sheller was contributed by the decree-holders and the transfer, if any, was made pending suit which was instituted on 02.08.1974 i.e. more than a year prior to the alleged change. It was further claimed that the objectors were fully aware of the litigation between the parties and were bound by the same.

5. Learned executing Court proceeded to dispose of the application without framing any issue arising out of the pleadings of the parties, though history of the case was duly discussed. The decree relied upon by the objectors in their favour dated 04.05.1979 was ignored on the plea that the decree-holders were not party to the said suit and, therefore, the said judgment was not relevant or binding for deciding entitlement of the decree-holders to recover the amount in question by way of attachment of the property in question and also for recovery of joint possession to the extent of 30% share.

6. In appeal the learned Lower Appellate Court was pleased to dismiss the objections by holding that as the property was transferred to the objectors after filing of the suit by the decree-holders. The said transfer was effected during the

pendency of the earlier suit. Therefore, the principle of I is pendens was applicable and summary dismissal of objections was upheld.

7. Mr.H.S.Bakshi, learned counsel appearing on behalf of the appellants, challenged the orders passed by the learned Courts below primarily on the ground that as the objectors were third party and claiming the ownership over the attached property, it was incumbent on the executing Court to decide all the questions including the question relating to right, title or interest in the property sought to be attached as under the provisions of Order 21 Rule 58-A of the CPC, these questions are to be determined by the Court dealing with the objection and not by a separate suit. In support of this contention reliance was placed on the Division Bench judgment of this Court in the case of Avinash Chander v. Mohan Lal and another, 1984 PLR 497 (P&H), wherein it was held as under:-

"All claims to property, or objections to attachment of any property, attached in execution of a decree, on the ground that such property is not liable to attachment, whether preferred by the parties to the suit or their representatives, or third parties, are to be adjudicated under Order XXI, Rule 58 if entertained by the Court and all questions, including questions relating to right, title or interest in the property attached, raised by such parties therein under this rule, are required to be determined by the Court dealing with the claim or objection, and not by a separate suit. Further, the order made on such determination is to have the same force as if it were a decree, but not being a decree itself."

8. Learned counsel for the appellants also placed reliance on the judgment of the Andhra Pradesh High Court in K. Venkarayappa Vs. Ellen Industries, Coimbatore and Others, wherein it has been held as under:-

"3. Order 21, Rule 58, CPC gives a statutory and substantial right to a person to object to the attachment of any property in execution of a decree. When an application, in exercise thereof, has been filed, clauses (a) and (b) of proviso to sub-rule (1) of Rule 58 clothes Court with power to dismiss such an application in limine, or (a) that the property attached had already been sold out; or (b) it was intended to protract the proceedings and in that process the application was designedly made or unnecessarily has been filed. If the Court exercises that power, the applicant is relegated to vindicate his rights by way of a regular suit as contemplated under sub-rule (5) of Rule 58 of Order 21 thereof. If the Court did not exercise the power as its exception in terms of the above provisions, then sub-rule (2) thereof enjoins the Court that all questions including the question relating the right, title or interest in the property attached shall be determined by that Court dealing with the claim or objection and not by a separate suit. Thereby the Legislature intended that it is mandatory duty cast on the court to hold an enquiry. The enquiry thereby posits that an opportunity to be given to the parties to adduce all necessary evidence in support of the claim or to resist such a claim by the opposite party and thereafter to give finality to the objection by that Court, subject to a right of appeal provided under sub-rule (4) thereof treating the order thereunder as a decree. The order thus becomes conclusive.

Thereby the Legislature has manufactured that holding an enquiry in adjudicating the right, title and interest of the objector in dealing with the claim or objection is mandatory and the order passed thereon shall be conclusive. Broached from this perspective, when we gleaned through the order passed, it must but be held that the lower Court passed the order under sub-rule (2) of Rule 58 of Order 21, without holding an enquiry and without giving an opportunity to the party. It straightaway passed the order on merits. Therefore, the order is per se contrary to the mandatory language and scheme of the Code; thereby it is not only in excess of the jurisdiction but also is vitiated by material irregularity in exercise of its jurisdiction. The contention of the learned counsel for the respondents that it could be treated as an order under clause (b) of proviso to sub-rule (1) of Rule 58 of Order 21, cannot be given any credence for the reason that not merely the court below did not express in terms thereof, but a perusal of the order also indicates that it was passed on merits attracting sub-rule (2) of Rule 58 of Order 21. Therefore, the order cannot be brought within clause (b) of proviso to sub-rule (1) of Rule 58 of Order 21, CPC. The order of the lower Court is accordingly set aside and the appeal is allowed. The lower Court is directed to hold an enquiry after giving adequate opportunity to both the parties and dispose of the same according to law. In view of the facts and circumstances, there shall be no order as to costs."

9. Learned counsel for the appellants also placed reliance on the judgment of the Hon'ble Andhra Pradesh High Court in the case of Muvvala Ramachandra Rao and another v. Kuricheti Ravi and another, 1999(2) CCC 413 (A.P.) which is also to the similar effect. The contention of the learned counsel for the appellants, therefore, was that in view of the settled law the impugned order passed by the learned executing Court as affirmed by the learned lower Appellate Court cannot be sustained as it was not open to the learned Courts below to have disposed of the objections in summary manner without letting the parties to lead evidence after framing issues arising out of the pleadings of the parties.

10. Mr.B.R.Mahajan, learned counsel appearing on behalf of respondent Nos. 1 to 2, on the other hand, vehemently contended that the objections raised by the appellants have been duly considered by the learned Courts below. The contention of the learned counsel for the respondents was that it was not necessary for the Courts to always frame issues and thereafter letting the parties to lead evidence thereon. In support of this contention reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, wherein it has been held as under:-

"12-13. It is clear that executing Court can decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicator)" process contemplated in Order 21, Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments

made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary."

However, the contention of the learned counsel for the respondent Nos.1 and 2 cannot be accepted as in this very judgment the Hon'ble Supreme Court has been pleased to lay down as under:-

"10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing Court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution Court to adjudicate upon it. But while making adjudication, the Court is obliged to determine only such questions as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelope only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because the resistor raised it. The questions which executing Court is obliged to determine under Rule 101 must possess two adjuncts. First is that such questions should have legally arisen between the parties and the second is, such questions must be relevant for consideration and determination between the parties e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21, Rule 97(2) of the Code, execution Court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication

contemplated in the sub-section."

Learned counsel for the respondents also placed reliance on the judgment of this Court in the case of Minakshi Saini and another v. Gurcharan Singh Bharmra and others, 2002 (2) CCC 229 (P&H): 2002(2) PLJ 78, wherein this Court has been pleased to lay down as under:-

"9. Learned counsel for the petitioners contended that the Executing Court had dismissed the objection petition in a perfunctory manner and had riot framed issues and gave opportunity to lead evidence. It is true that adjudication in such matter is required to be conducted in terms of Order 21 Rule 98, CPC. It has been further contended that the enquiry contemplated under Order XXI Rule 101, CPC is an extensive one and is a substitute for a suit and all questions relating to right, title and interest in the property arising between the parties to a proceeding had to be determined by the Executing Court. This has been so held in P.C. Bumotra Vs. Chairman-cum-Managing Director, New India Assurance Co. Ltd. and another, a judgment from the Kerala High Court. It has also been held by this Court in Charanjit Singh v. Manmohan Singh, 1989 CCC 190 (P&H) that where dispute requires the recording of evidence, issue should be framed and parties be allowed to lead evidence. However, in the present case to my mind, there is no need to frame issues and to give an opportunity to the parties to lead evidence because the facts are very much clear. There is an attempt on the part of the objectors to prolong the already protracted litigation further into infinity. The decree-holders are trying to execute the decree in their favour for the last 21 years. It has been observed by this Court in Usha Devi v. Par-shadi Lal, 1999 (1) CCC 110 (P&H) : 1998(2) PLJ 673 and also in another case that need of framing of issues would depend upon the facts and circumstances of each case and it is not incumbent upon the Executing Court that it must put to trial every objection filed in execution proceedings may be frivolous, vexatious and delay causing objections can be summarily decided. It has been also held in Som Parkash v. Santosh Rani, 1991(1) PLR 89 that adjudication of objections does not mean that framing of issues is always necessary for the Executing Court and the term "adjudication" as used in Rules does not start and end with the framing of issues but it requires appreciation of the case of the objector and documents in support of such objections. Thus, framing of issues is not always necessary and appreciation of pleadings of the objector and his documents means adjudication. Smt.Pushpa Singh played smart with the Court and fraudulently obtained an ex parte decree and on the basis of that decree, got the suit property transferred through three sale deeds to the objectors. It is difficult to believe that persons who had brought a suit for partition and were successful in obtaining a decree and had also successfully opposed the appeal would have so conveniently allowed themselves to be proceeded against ex parte and to get passed an ex parte decree against them. Rather a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of litigation. The judgment and decree obtained by playing fraud upon Court is a nullity and non-est in the eye of law. Therefore, the decree obtained

by Smt.Pushpa Singh cannot come in the way of execution of the decree at the behest of Smt.Pushpa Singh. The objectors had stepped into the shoes of Smt.Pushpa Singh and cannot have a better title of the suit property than Smt.Pushpa Singh. Thus, they cannot be held to be bona fide purchaser for valuable consideration. Their objections are liable to be dismissed summarily. There is no question that they had purchased the suit property without notice for valuable consideration because pendency of the suit is notice to all of them. Thus, the alienation in favour of the objectors is hit by the principle of lis pendens as envisaged u/s 52 of the Transfer of Property Act."

The reading of the this judgment shows that it is only in case the objections are found to be frivolous, vexatious and are filed with an object to delay the proceedings, the same can be disposed of summarily.

11. It may be noticed in the present case that the objectors had based their claim prima facie on a decree passed in their favour which was inter se between the parties. The learned executing Court was not correct in coming to the conclusion that the decree-holders were not parties to the decree passed in favour of the objectors. The said decree was passed against Narinder Singh Randhawa, who was one of the decree-holders. Once it is held that the objections were not totally frivolous, then the order passed by the learned Courts below cannot be sustained. In the facts and circumstances of the case, it was incumbent on the learned executing Court to have framed issues and thereafter permit the parties to lead evidence and to adjudicate and decide the issues/ dispute raised finally between the parties.

Consequently, this appeal is allowed, the orders passed by the learned executing Court as well as the learned lower Appellate Court are set aside and the case is remanded to the executing Court to adjudicate upon the objections filed by the appellants against the execution of the decree after framing issues and letting the parties to lead evidence. Keeping in view the fact that the matter is pending since long, the executing Court is directed to expedite the proceedings of the case.