

**(2015) 03 P&H CK 0079**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CR Nos. 556, 564, 290, 450 and 2505 of 2013 (O and M)

Rajiv Sehgal and Others

APPELLANT

Vs

Kishori Lal and Others

RESPONDENT

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**Date of Decision :** 09-03-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 12  
Transfer of Property Act, 1882 — Section 5

**Citation :** (2015) 03 P&H CK 0079

**Hon'ble Judges :** Rakesh Kumar Jain, J.

**Bench :** Single Bench

**Advocate :** B.S. Sra, for the Appellant; B.R. Mahajan, Senior Advocate and Prateek Mahajan, Advocates for the Respondent

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## **Judgement**

Rakesh Kumar Jain, J.—This order shall dispose of five petitions bearing CR No. 556, 564, 290, 450 and 2505 of 2013 as all are inter-connected. However, the facts are extracted from CR No. 556 of 2013.

2. One Hira Lal had five sons, namely, Jawahar Lal, Madan Lal, Tilak Raj, Raj Kumar and Bhajan Lal. They were the owners of land measuring 10 kanals bearing khasra no.309, situated in the urban area of village Tung Bala, Tehsil and District Amritsar. The aforesaid land was acquired vide notification dated 05.01.1962 issued under Section 36 of the Punjab Town Improvement Act, 1922 by the Improvement Trust, Amritsar (here-in-after referred to as the "Trust") for the Development Scheme No. 61 which was sanctioned by the State Government on 17.09.1963. The notification under Section 41 of the Punjab Town Improvement Act, 1922 was issued on 02.06.1965. The Land Acquisition Collector delivered the award on 13.10.1966. Although the land owners Jawahar Lal etc. applied for exemption of their land from acquisition as the land of various other land owners including owners of khasra nos.310, 311, 312 and 314 was exempted but the exemption in their case was not granted, therefore, they filed Civil Suit No. 149 of 1983 titled as "Jawahar Lal etc. v. Amritsar Improvement

Trust" for permanent injunction restraining the Trust from dispossessing them from the land in dispute. On 27.01.1994, an offer was made to Jawahar Lal etc. that they would be allotted six plots in lieu of their land, subject to the condition that they would withdraw their suit. In view of the offer made by the Trust, Jawahar Lal etc. withdrew their suit on 31.01.1994.

3. Thereafter, Jawahar Lal etc. filed Civil Suit No. 393 of 1994 titled as "Jawahar Lal etc. v. Amritsar Improvement Trust" for declaration to the effect that the plaintiffs are entitled to allotment of six plots in lieu of their land measuring 10 kanals falling in khasra no.309, situated in the urban area of village Tung Bala, Tehsil and District Amritsar and for mandatory injunction directing the Trust to allot the said plots to them. The Chairman of the Trust filed an admitting written statement and the statement of Mihan Singh, Senior Assistant of the Trust was also recorded by the Court about the concession of the Trust for allotment of the plots to the plaintiffs. The suit was, thus, decreed on 22.09.1994 for mandatory injunction directing the Trust to allot six plots to the plaintiffs in lieu of their acquired land but the suit for declaration was dismissed.

4. The State Government granted approval on 01.06.1995 for allotment of plots to 47 local displaced persons including Jawahar Lal etc. and the list of such allottees was duly published in the newspaper "Punjab Kesri" dated 08.06.1995.

5. Jawahar Lal filed execution of the judgment and decree dated 22.09.1994 in which Kishori Lal filed an application under Order 22 Rule 10 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") for being substituted as a party on the ground that the decree holders, through their Special Power of Attorney Raj Kumar, had executed four sale deeds on 26.06.1996 at Delhi with regard to the six plots. Raj Kumar admitted the claim of Kishori Lal that he may be substituted in his place and the Executing Court, after recording evidence, allowed the application of Kishori Lal filed under Order 22 Rule 10 of the CPC and substituted him as decree-holder vide its order dated 15.02.2010.

6. After becoming the party, Kishori Lal entered into a compromise with the Trust and Bhajan Lal and the Trust agreed to allot six plots as per the decree to Kishori Lal and Bhajan Lal. Consequently, the execution application was dismissed as withdrawn vide order dated 22.02.2010.

7. Legal representatives of Jawahar Lal and Tilak Raj along with Madan Lal filed separate appeals against the order dated 15.02.2010 allowing the application of Kishori Lal filed under Order 22 Rule 10 of the CPC. The appeals filed by the legal representatives of Jawahar Lal and Tilak Raj along with Madan Lal were dismissed by the District Judge, Amritsar vide its order dated 16.11.2012 against which they have filed CR No. 556 and 564 of 2013, whereas CR Nos. 290, 450 and 2505 have been filed by Kishori Lal and Bhajan Lal for setting aside the specific part of the judgment dated 16.11.2012 whereby the District Judge, Amritsar has held the judgment and decree dated 22.09.1994 passed in Civil Suit No. 393 of 1994 titled as "Jawahar Lal etc. v. Amritsar Improvement Trust" as

collusive and inexecutable.

8. It is pertinent to mention that the counsel for the petitioners filed CM No. 15180-CII of 2014 in CR No. 556 of 2013 for pleading additional facts and grounds and placing on record Annexures P-7 and P-8 with a prayer that the order dated 22.02.2010 (Annexure P-8) based upon the impugned order dated 15.02.2010 be also set aside and the execution application be restored to its original number. It is averred in the application that due to inadvertence, order dated 22.02.2010, by which the execution application was consigned to the record room, could not be challenged.

9. In view of the facts and circumstances, the aforesaid application is allowed, as prayed for.

10. There is another application bearing CM No. 15098-CII of 2014 filed in CR No. 556 of 2013 for impleading the legal representatives of Madan Lal who is stated to have died on 10.06.2014.

11. The application is allowed, as prayed for, subject to all just exceptions. The amended memo of parties filed along with the application is taken on record.

12. Counsel for the petitioners has argued that the application filed under Order 22 Rule 10 of the CPC could not have been filed during the execution application as it could be filed only during the pendency of the suit and has relied upon a judgment of the Madhya Pradesh High Court in the case of Mahfooz Ahmed and Another Vs. Neelmani and Another, and a judgment of the Chhattisgarh High Court in the case of Messrs Bulchand Kewalram Vs. Messrs Bulchand Kishan Chand Oil Mill and Another, in support of his contention.

13. On the other hand, learned counsel for the respondents has submitted that the application under Order 22 Rule 10 of the CPC can be filed even at the stage of execution and has relied upon a judgment of the Supreme Court in the case of Ghantesher Ghosh Vs. Madan Mohan Ghosh and Others, .

14. In order to appreciate the argument raised by learned counsel for the petitioners, it would be relevant to refer to Order 22 Rule 10 of the CPC, which reads thus:

"10. Procedure in case of assignment before final order in suit.-- (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

15. In Mehfooz Ahmed's case (supra), the Madhya Pradesh High Court has held as under:-

"14. Thus, unless an assignment, creation or devolution of any interest is during pendency of suit, no right accrues under Order 22 Rule 10. In the case at hand, the suit having been decreed and allowed to attain finality as no appeal is preferred, the judgment debtor passing over the title during execution proceedings, in the considered opinion will not amount to assignment or creation of any interest during the pendency of a suit." 16. In *Bulchand Kewalram's* case (supra), the Chhattisgarh High Court has made the following observations:-

"9. A bare perusal of Rule 10 of Order 22 of the Code would make it clear that to continue a suit or a proceeding, the creation or devolution of interest must accrue during the pendency of the suit or the proceeding and not after its disposal." 17. However, the Supreme Court, in *Ghantesher Ghosh's* case (supra) has held that Order 22 Rule 10 of the CPC would also apply to the execution and has made the following observations:-

"16. As per Order 22 Rule 10, in cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. As per Order 22 Rule 12, nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order meaning thereby that Order 22 Rule 10 will apply to execution proceedings whereby the same scheme regarding devolution of interest of either party in the suit is made applicable even to execution proceedings." 18. Thus, in view of the judgment of the Supreme Court in *Ghantesher Ghosh's* case (supra), the first argument raised by learned counsel for the petitioners would not help him as it has been decided that an application under Order 22 Rule 10 of the CPC can even be filed and maintained during the pendency of the execution.

19. Counsel for the petitioners has further argued that as per Section 5 of the Transfer of Property Act, 1882 (here-in-after referred to as the "Act"), for the purpose of transfer of property in present or future, the existence of the property at the time of transfer is a must, whereas there is no transfer by the Trust of the property in dispute to the original decree-holders. In support of his submission, he has relied upon a judgment of the Full Bench of the Madras High Court in the case of *Chief Controlling Revenue Authority, Madras Vs. Sudarsanam Picture, Madras*, and a judgment of the Supreme Court in the case of *Jugalkishore Saraf Vs. Raw Cotton Co. Ltd.*, .

20. On the other hand, counsel for the respondents has submitted that Section 5 of the Act defines the transfer of property which means an act by which a living person conveys property, in present or future, to one or more other living persons. It is also submitted that the right in the property in dispute had accrued in favour of the original decree-holders against the Trust by virtue of the decree dated 22.09.1994 and the alleged agreement to sell was entered into on 14.06.1995 and four sale deeds were executed in favour of Kishori Lal on 26.06.1996 on the basis of which he had filed the application under Order 22 Rule 10 of the CPC for substituting himself as the decree-holder in the execution

application. It is also submitted by him that the right in the decree can be transferred and has relied upon a judgment of the Supreme Court in the case of Bhoop alleged son of Bhoop Vs. Matadin Bhardwaj, .

21. In order to appreciate the second contention raised by learned counsel for the petitioners, it would be relevant to refer to Section 5 of the Act, which reads thus:-

"5. "Transfer of property" defined. -- In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

22. In Chief Controlling Revenue Authority's case (supra), the Full Bench of the Madras High Court has held that the word "conveyance" in wide sense include sale, mortgage, charge, lease etc. and while a transfer of property may take place not only in the present but also in the future, the property must be in existence at the time of the transfer for an instrument to be a deed of transfer. It is held that the words "in present or in future" qualify the word "conveys" immediately preceding "property". The conveyance may be in present or in future but the conveyance should be of a property in existence.

23. There is no quarrel with the interpretation arrived at by the Full Bench of the Madras High Court, referred to above, but the facts and circumstances of the present case are altogether different because in this case, the right in the property in dispute was vested in the vendor by virtue of the decree passed earlier on 22.09.1994 on the basis of which the agreement to sell was executed on 14.06.1995 and the sale deeds were executed on 26.09.1996. The said decree had become final because it was based upon the admitting written statement as the Trust had made an offer that the plots would be allotted to the decree-holders and a specific statement was suffered by the Trust in that regard. Not only that, the State Government also granted approval for allotment of plots in favour of the decree holders on 01.06.1995 and their names were also published in the list of such allottees in the newspaper "Punjab Kesari" on 08.06.1995. Thereafter, the agreement to sell was entered into on 14.06.1995 and the sale deeds were executed on 26.06.1996.

24. In view of these facts and circumstances, the issue raised by learned counsel for the petitioners on the basis of Section 5 of the Act, does not survive.

25. Even otherwise, as argued by learned counsel for the respondents, right in the decree can be transferred as has been held by the Supreme Court in the case of Bhoop alleged son of Sheo's case (supra) that a pre-emptor can transfer his

right of pre-emption before execution of decree and the transferee of pre-emptor can put the decree to execution and seek possession because the property becomes the property of the preemptor by fiction of law on deposit of purchase money.

26. Thus, in view of the above, I do not find any merit in the petitions bearing CR No. 556 and 564 of 2013 and hence, the same are hereby dismissed.

27. Insofar as the CR Nos. 290, 450 and 2505 of 2013 are concerned, learned counsel for the petitioners therein has argued that the learned District Judge has erred in exercise of its jurisdiction while commenting upon the decree dated 22.09.1994 on the ground of collusion as the same had become final between the parties, especially in the execution proceedings, while deciding the application filed under Order 22 Rule 10 of the CPC. It is submitted that the decree, may be on contest, consent or compromise, has to enure to the benefit of the decree-holder until and unless, set aside in accordance with law and cannot be commented upon in the collateral proceedings in the manner in which the learned District Judge has passed the order as he does not possess any suo motu powers.

28. On the other hand, counsel for the respondents has argued that if the decree has been passed on the basis of collusion between the decree holder and the judgment-debtor, the Appellate Court can always lift the veil and find out the true import of the decree.

29. After hearing learned counsel for the parties in this regard and examining the available record, I am of the considered opinion that the learned District Judge has committed an error while making the observations under challenge because it was not only the consent given by the Trust while filing the written statement admitting the claim of the decree-holders and the statement made by Mihan Singh, Senior Assistant of the Trust on the basis of which the decree was passed but also the State Government had granted approval on 01.06.1995 for allotment of plots to 47 local displaced persons including Jawahar Lal etc., the original decree-holders, and the list was even published in the newspaper "Punjab Kesari" on 08.06.1995. Thus, it would mean that the action of the Trust was duly acknowledged by the State Government with the grant of approval and including names of the original decree-holders in the list of 47 local displaced persons to whom the plots were to be allotted and even the said list was made public by way of publication in the newspaper.

30. Thus, in view of the aforesaid facts and circumstances, the revision petitions bearing CR No. 290, 450 and 2505 of 2013 are hereby allowed and the part of the judgment dated 16.11.2012 passed by the learned District Judge, Amritsar, which has been challenged in these revision petitions, is hereby set aside.