
(1989) 09 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3523 of 1987

Sadhu

APPELLANT

Vs

Gram Panchayat, Akalian

RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1989) 09 P&H CK 0122

Hon'ble Judges : M.S. Liberhan, J

Bench : Single Bench

Advocate : M.S. Rakkar, for the Appellant; Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—This revision petition arises out of an order of the executing Court dated 23.10.1987, accepting the objections raised by the respondent.

2. The facts and state of circumstances leading to the litigation under which this revision petition has come up before me, are that petitioner Sadhu son of Lachhman decree-holder had brought a suit for injunction to restraining the Gram Panchayat from selling, cutting or dealing in any other manner with the trees standing in the land in dispute. The judgment debtor was sued through Rulia Ram the then Sarpanch. The suit was decreed on 21.2.1980 in civil suit No.254 of 1979.

3. After almost a lapse of six years, the petitioner sought the execution of the decree dated 4.2.1980. The respondent Gram Panchayat, judgment debtor preferred numerous objections to the execution of the said decree including the decree was void inasmuch as the then Sarpanch Rulia Ram was never authorised to appear or defend the Gram Panchayat in the said suit resulting in the decree sought to be executed. He was never authorised to give any statement on behalf of the judgment debtor accepting the claim of the decree holder and the statement which was alleged to have been made by him was unauthorised illegal

and not binding on the judgment debtor. The Gram Panchayat claimed the absolute ownership of the land in dispute as well as the trees standing thereon. The inherent jurisdiction of the civil Court to pass the decree was also challenged.

4. The decree holder denied the averments made and claimed that the decree was not collusive and the Sarpanch was wholly competent and unauthorised to appear on behalf of the judgment debtor. The statement made by him admitting the respondent's claim binding on the judgment debtor. Various other objections with respect to limitation, maintainability of the objections u/s 47 of the Code of Civil Procedure, right to sell the trees standing on the suit land, as well as estoppel with respect to raising of objections in the execution proceedings were raised.

5. The executing Court after recording the evidence observed that the decree was passed on the admission made by the then Sarpanch Rulia Ram. The decree holder claimed that the disputed trees are the ownership on the entire village. After going through the pleadings in the suit, the executing Court-observed that Sadhu Singh had filed a suit against the Gram Panchayat for permanent injunction restraining it from selling, cutting and removing the trees standing around the village pond situated in Khasra No.508 as entered in the Jamabandi of 1976-77 of the village. The then Sarpanch Rulia Ram made a statement and accepted the claim resulting in the decree dated 21.2.1980. It was further observed that Undisputedly as per copy of the Jamabandi, the Gram Panchayat was the owner of Khasra No.508. The statement of Rulia

6. Ram to the effect that Gram Panchayat had got no concern with the suit and that the same is correct, was also not disputed, the executing Court after appraising the evidence as well as the undisputed facts, came to the conclusion that there was no resolution authorising Rulia Ram to accept the claim or to defend the suit. It was further found that in terms of the Rules made under the Gram Panchayat Act, 1952, the Gram Panchayat can be sued through its Sarpanch only for the purpose of service. The Gram Panchayat never authorised Rulia Ram then Sarpanch to defend the case or make a statement, consequently, the decree suffered by him is void and inexecutable. Resultantly the objections were accepted.

7. The entire thrust of the learned counsel for the petitioner was that the executing Court could not go behind the decree. Consequently, no objection u/s 47 was maintainable. Half-hearted attempt was made to persuade me to reappraise the evidence and raise an adverse inference against the Gram Panchayat with respect to authorization of Rulia Ram Sarpanch to defend the case in view of the fact that the Gram Panchayat did not produce the proceedings book in Court.

8. The learned counsel for the petitioner, in order to buttress his submission relied on *Sunhera and others v. Ear Narian* (Deceased by his L.R's and others, 1985 PLJ 179, *Jagtar Singh and another v. Kartar Singh and others*, 1979 PLJ

205, Janata Cinema and Another Vs. Cineram Private Ltd., Rajappa v. Sagar Krishnappa and Sons, AIR 1974 Kar 51 and Karamat Ali and Another Vs. Mt. Sogra,

9. The only legal issue raised by the learned counsel for the petitioner was that the executing Court cannot go behind the decree. On the face of it, the argument appears to be very attractive. It is well established that the executing Court cannot go behind the decree.

10. The undisputed facts which emerged on the record as well as accepted in the course of arguments are too perceptive to get be fooled by abstract appraisal of law canvassed by the petitioner. The learned counsel for the petitioner was not able to dispute the accepted principles that the executing Court in order to find out the true effect of the decree could in appropriate cases take into consideration the pleadings as well as the proceedings leading up to the decree. The executing Court had to ascertain the circumstances under which particular words under the decree were used. My observation finds corroboration from a judgment reported in Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another, , wherein it has been observed that :-

"It is true that an executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can in appropriate cases is ought to take into consideration on the pleadings leading up to the decree. In order to find out the meaning of the words employed in a decree, the court often has to ascertain the circumstances under which these words came to be used. That is the plain duty of the executing Court and if that court fails to discharge that duty it would be deemed to have failed to exercise the jurisdiction vested in it!"

11. Apart from the legal proposition laid down by Hon"ble the Supreme Court, the learned counsel for the petitioner decree-holder, was unable to prove that the trees with respect to which the decree in question was sought to be exercised were not part and parcel of Khasra No.508, which again Undisputedly, according to the decree holder was owned by the Gram Panchayat. Even the decree holder has asserted that the disputed trees are the ownership of the entire village. In view of these undisputed facts, it is strange that in his statement Rulia Ram Sarpanch admitted the claim of the decree holder. The fact are eloquent enough to unveil the fraud being committed on a corporate body. It is obvious that either Sadhu was decoyed by Rulia Ram Sarpanch or otherwise it was an attempt to secure a fraudulent decree against the Gram Panchayat, an inanimate body injecting it from dealing with its own property. I do not find any reason that the court should permit such draconian method to be adopted to produce an unjust result. The. court has also to keep in mind that if a particular sharp practice is recognised, it would lead to deprivation of the Gram Panchayats of their lands. The only intelligent deduction made from the facts which emerge from the evidence and are even not disputed the course of arguments is that the decree was suffered in the absence of necessary party before the Court.

12. It is not disputed at the Bar that corporate bodies are not living persons and can speak only through resolutions. In the absence of a resolution authorising a particular person to act or to conduct or the defend a case, that act or deed shall be deemed to be without any authority and the act or the result of the case cannot be binding on the corporate body. In the absence of any authority vested in Rulia Ram Sarpanch by means of any resolution authorising him to defend the case or to accept the claim, the same shall be deemed to be a decree suffered by a person decoyed by the plaintiff as a substitute for the defendants. Justice cannot be allowed to be shackled by these sharp practice with the help of technicalities.

13. The facts and circumstances of the case are squarely covered by the judgment reported in Seth Hiralal Patni Vs. Sri Kali Nath, wherein it was observed :-

"The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seized of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or even the parties to it."

14. It cannot be disputed that the decree shall be deemed to have been passed without inherent jurisdiction by the trial Court being passed in the absence of the defendants or on the statement of the decoyed defendant i.e. when the real defendant is not in fact present in Court and only somebody without authority legal or otherwise appeared in this Court and accepted the claim of the plaintiff. If the situation is to be permitted by which the decree suffered by an unknown and unauthorised person, on behalf of the defendant, is allowed to stand or is permitted to be executed, it would result in draconian rule of law to prevail and the courts will be made instrumental in perpetuating the injustice and fraud.

15. So far the judgment in M/s. Janata Cinema's case (supra) relied upon by the learned counsel for the petitioner is concerned, it has no relevance to the question raised in the present case. There is no dispute that the objection with respect to territorial jurisdiction or validity of a decree on the ground of fraud may not be permitted to be raised in the executing court. The objection raised in the judgment cited was with respect to lack of territorial jurisdiction of the Court which passed the decree and the decree having been obtained by suppressing the facts required to be disclosed with respect to the territorial jurisdiction. There is no doubt that the territorial jurisdiction of a court stands entirely on a different footing than the lack of inherent jurisdiction. It cannot be disputed that a decree passed at the back of the defendant is a void decree while absence of territorial jurisdiction does not make the decree void in itself. As for Rajiapa's case (Supra) is concerned, the law laid down again is of no relevance with the facts in the present case. Herein there is no dispute with respect to the jurisdiction of the

civil Court though it could have been raised. The entire case has been argued on the assumption that the civil Court did not have the jurisdiction to grant injunction. Karamat Ali's case (supra) is again distinguishable on facts itself. There the controversy which was being determined was whether the legal heirs could raise objections in execution of a decree suffered by the judgment debtors as being fraudulent or collusive. Herein there is no such question. The Gram Panchayat-objectors are neither the legal representatives nor a decree has been suffered by the defendant. The entire controversy is that the defendant judgment debtor never suffered any decree.

16. So far Sunhera's case (supra) is concerned, there is no dispute again on the appraisal of law laid down to the effect that executing Court cannot go behind the decree but again an appraisal has been made in view of the peculiar facts and circumstances of that case which was to the effect that whether Order 1 Rule 8 of the Code was complied with or not. That was a disputed question of fact which could not be gone into the execution proceedings of a decree which had come into existence after due compliance of Order 1 rule 8 of the Code. Otherwise also the said matter could have been decided independently in a suit.

17. Jagtar Singh's case (supra) is being referred to as it has been referred to by the petitioner. It is noted only to be rejected. The law laid down is to the effect that legality or validity of a decree cannot be gone into by the executing Court nor it has jurisdiction to modify or reverse the decree. There cannot be two opinions, in view of the law laid down by Hira Lal's case (supra) that objection with respect to the decree being void and non-executable can always be raised when the decree is being given effect to, may be in the executing Court. A person is not bound to challenge a void decree. He can object to its enforcement whenever it adversely affects him.

18. The learned counsel for the respondent contends that additionally the decree is void for the reason that it has been passed on the admission of Rulia Ram Sarpanch who made a statement without having any resolution in this behalf in his favour nor any resolution has been placed on the record in the suit. The statutory rule envisages that no body can act on behalf the Gram Panchayat unless, he has been statutorily authorised to do so. There is no dispute with respect to this, proposition. In support of his contention, the learned counsel for the respondent relied upon Kaushalya Devi and Others Vs. Shri K.L. Bansal, .

19. Keeping the equity, justice and peculiar circumstances of the case as stated above, in view, I find no ground to interfere with the impugned order in exercise of my revisional jurisdiction inasmuch as interference would occasion failure of justice and cause irreparable injury to the respondent whose objections were accepted by the executing Court.

20. In view of the above observations of mine, the revision petition is dismissed with costs. Costs Rs. 1000/-.