
(2001) 02 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Execution Second Appeal No. 2901 of 1999

State of Punjab

APPELLANT

Vs

Sanjogta and others

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2001) 02 P&H CK 0007

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : H.S. Gill, for the Appellant; D.S. Brar, for the Respondents No. 1 to 4 and Mr. A.K. Kalsy, for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—This is Execution Second Appeal by the State of Punjab against the order dated 10.2.1999 of Additional District Judge,

Ludhiana, dismissing its appeal against the order of Addl. Civil Judge (Senior Division), Ludhiana, dated 28.10.1996, whereby he had dismissed

its objections filed under Order 21 Rule 97, read with Section 151 of the CPC (for short CPC).

2. Smt. Sanjogta widow, Kumari Shakuntla and Kumari Gulshan Bala, daughters of Lachhman Singh filed civil suit in the year 1968 against

Respondent No. 5 with regard to House No. 626-L, Model Town Ludhiana measuring 836 sq.yards. This property had been sold by Parbraham

Singh to Lachhman Singh and Gurdai half and half. Gurdai died and her half share devolved upon Lachhman Singh in the year 1960. Lachhman

Singh sold 405 sq.yards to Harbans Kaur out of House No. 626-L through two sale-deeds dated June 1, 1961 and May 13, 1964. Lachhman

Singh died in the year 1965 leaving behind Smt. Sanjogta wife and Kumari Shakuntla and Kumari Gulshan Balla, daughters as his legal

representatives. The said suit was decreed on 17.1.1977 by Subordinate Judge Ist Class, Ludhiana. The operative portion of the decree reads as

follows:

In view of my findings on the above issues, the suit of Plaintiffs i.e. Smt. Sanjogta and her two daughter succeeds and the same is hereby decreed

for a declaration to the effect that the Plaintiffs are the owner of properties Nos. 1 to 9 (except portion of property No. 1, purchased by Harbans

Kaur from Lachhman Singh) described in schedule A annexed to the plaint and for possession of the residential Kothi No. 626-L mentioned at Sr.

No. 1 of schedule A Annexed to the plaint except the part of Kothi sold by Sh. Lachhman Singh to Harbans Kaur, by virtue of Plaintiffs right to

inherit to the estate of Late Sh. Lachhman Singh as owner of the property. It is further directed that the Plaintiffs shall now be entitled to claim the

refund of entire arrears of rent deposited by the tenants in respect of the properties in dispute and to realize future rents from them. The court fee

shall be first charged on the property decreed, Copy of the decree sheet be sent to the Collector, Ludhiana for the realization of the court fee.

3. Harbans Kaur filed appeal which was dismissed on January 17, 1984. The Regular Second Appeal was also dismissed on March 15, 1984.

SLP was dismissed by the apex Court.

4. In execution proceedings instituted by Sanjogta, number of objections were filed by Harbans Kaur with a view to retain her possession over the

said property but she failed.

5. On October 28, 1996, State of Punjab filed objections under Order 21, Rule 97 CPC challenging the decree on the ground of fraud. Those

objections were dismissed by Addl. Dist Judge, Ludhiana vide order dated 10.2.99. The State of Punjab has filed Regular Second Appeal against

the dismissal of objections filed under Order 21 Rule 97 CPC saying that a fraud has been committed in selling H. No. 626-L measuring 0.97

kanals=485 sq.yards describing it as 626-LA measuring 836 sq. yards thus adding to 485 sq.yards the area measuring 351 sq.yards pertaining to

plot No. 627. Lachhman Singh purchased only 485 sq.yards from Parbraham Singh and sold 405 sq. yards to Harbans Kaur and the remaining 80

sq.yards belongs to Lachhman Singh, State of Punjab in their objections submitted that the present execution pertains to an area measuring 836 sq.

yards which in fact forms part of plot No. 627 but has been wrongly and fraudulently shown to be a part of plot No. 626-L, Model Town

Ludhiana. In fact the area of 626-L is only 0-97 kanals i.e. 485 sq.yards and the remaining area of 351 sq. yards has been part of plot No. 627,

which has been wrongly mentioned with mala fide design, to grab that property. It was alleged in the objections that the State of Punjab has

legitimate and legal claim to the excess area. In case execution succeeds there will be multiplicity of litigation, Neither the Decree-Holder nor the

judgment Debtor nor any body else, has legal right, claim or interest regarding 351 sq.yards of the land which was shown fraudulently as part of

plot No. 626-L, Model Town, Ludhiana. In case the Decree Holder gets possession, the objections of the objector will become infructuous

objector was not aware about the pendency of the litigation. The objector (State of Punjab) came to know about the true state of affairs when

some revenue official came to measure the area who concluded that the area shown in the judgment and decree was 836 sq.yards which has been

wrongly shown as area of plot No. 626-L, Model Town, Ludhiana.

6. Objections filed by the State of Punjab were contested by the decree-holder urging that these objections have been filed at the instance of

Harbans Kaur judgment Debtor who has failed upto Hon"ble Supreme Court in getting stay. It was also urged that the objector has no locus standi

to file objections. It was further urged that objections had been filed with mala fide intention to help Harbans Kaur judgment debtor. The objector

was never a party to the execution proceedings nor the objections relate to the execution, discharge and satisfaction of the decree. If the objector

has any claim he can bring a separate suit for appropriate relief. It was also urged that Smt. Harbans Kaur was in unauthorised possession of the

property and therefore, Smt. Sanjogta and her children filed suit against her which was decreed. In execution, they were claiming possession from

Harbans Kaur judgment debtor. Possession was not being claimed against the State of Punjab. State of Punjab figures nowhere. Harbans Kaur

set-up a false and fabricated will which was not believed by the court and the suit was decreed. All the objections and pleas raised by Harbans

Kaur including the ones sought to be raised by the State of Punjab, were decided by the court. Filing of objections by the State of Punjab was a

clear abuse of the process of the court when objections filed by Harbans Kaur judgment-debtor had been dismissed. The execution proceedings

have been pending for the last more than 40 years and the State of Punjab never came forward to file objections. Warrant of possession has

already been issued.

7. It was submitted by the learned Counsel for Harbans Kaur judgment-debtor that after partition of the country, to settle refugees, the State

Government formulated Model Town Development Scheme in the year 1950. Smt. Harinder Pal Kaur purchased plot bearing No. 626-L, Model

Town, Ludhiana measuring 0.97 kanals = 485 sq.yards. Plot Nos. 627, 628 and 629 were never sold by the State. On January 4, 1954, Smt.

Harinder Pal Kaur obtained sanction from the Deputy Commissioner to resell plot No. 626-L and it was sold on January 27, 1954 to one

Kamaljit. Said Kamaljit applied for loan showing the area of plot as 0.97 kanals i.e. 485 sq. yards, On March, 15, 1955, Kamaljit after obtaining

sanction transferred the plot, to Parbraham Singh who took possession of plot No. 626-L from the Sub Divisional Officer, Provincial Sub Division

No. 1 by showing the area as 0.97 kanals = 485 sq.yards only on 10.7.1955. He applied for loan by showing the measurements as East: 30, West:

70, North: 52 and South: 74. On September 16, 1957, Parbraham Singh transferred the plot to Mehar Chand vide sanction dated August 21,

1957. On November, 21, 1957 again sanction was obtained and the plot was re-transferred to Parbraham Singh on December 21, 1957.

Parbraham Singh repurchased the plot and took loan and on November 25, 1960, Parbraham Singh obtained sanction to sell plot No. 626-L to

Gurdai and Lachhman Singh. In the agreement to sell, entered with Gurdai and Lachhman Singh on November 15, 1960 Parbrahama Singh

showed the area of Plot No. 626-L as 830 sq. yards bounded as East: 51 West 89.6 North: 99 South: 113 by illegally including the area of

adjoining plot i.e. plot No. 627 owned by the State Government. It was submitted that the State Government never sold plot nos, 627, 628 & 629

till date. In the year 1961 vide registered sale-deed Lachhman Singh sold 200 sq.yards of area i.e. 36 ft x 50 ft. alongwith 5 ft, wide passage to

Harbans Kaur out of plot No. 626-L. In the year 1964 Lachhman Singh further sold 205 1/2 sq. yards to Harbans Kaur. In the year, 1964,

Gurdai died. After the death of Gurdai Lachhman Singh, the legal representatives of Gurdai and Lachhman Singh filed suit in the year 1968 plot

No. 626-L. It was submitted that the court while passing decree dated January 17, 1977 specifically passed an order that the Plaintiffs are the

owners of properties No. 1 to 9 except portion of the property purchased by Smt. Harbans Kaur described in schedule A attached to the plaint

for possession of residential Kothi No. 626-L mentioned at serial No. 1 of schedule A annexed to the plaint except portion of kothi i.e., 405 1/2

sq.yards alongwith 5 feet wide passage sold by Lachhman Singh to Harbans Kaur by virtue of Plaintiff's right to inherit the estate of late Lachhman

Singh as owners of the property. It was submitted that alongwith the plaint neither site-plan nor any measurements nor any boundries were given.

In execution, a local Commission was appointed to determine the unsold area of 626-L who reported the area of the property as 836 sq.yards

which included 351 sq. yards of the part of the adjoining plot i.e. plot No. 627 owned by the State Government. It was submitted that in the month

of September, 1996 for the first time, it came to the knowledge of the State that fraud has been committed by Parbraham Singh as part of plot No.

627 is part of the road and plot Nos. 628 & 629 is a park owned by the State. It was submitted that to the decree which is being executed, the

State was not a party. It was submitted that it was altogether a new decree created by the Local Commissioner by enhancing the area of plot No.

626-L from 485 sq. yards to 836 sq. yards, boundries: East 51,3 West 89.6 North:100, South: 113.4"" by including part of plot nos 627 to the

extent of 351 sq. yards. It was submitted that Parbraham Singh and others are facing trial under Sections 420, 467, 468, 471 and 120-B, IPC in

the court of Judicial Magistrate 1st Class, Ludhiana, for the said fraud and illegal acts. It was submitted that Parbraham Singh applied for bail

before the High Court. In the bail application he has admitted that he never sold more than 485 sq. yards of plot No. 626-L. It was submitted that

beyond 485 sq. yards No. title could have been passed when Parbraham Singh himself was not owner of said 351 sq. yards. When the State

Government came to know that in execution of the decree attempt was being made to take possession of 836 sq. yards objections were filed by

the State under Order 21 Rule 97 read with Section 151 CPC. It was submitted that these objections could not be disposed of summarily by the

Executing Court. The Execution Court should have framed issues and tried these objections and these objections could have been disposed of

through a full dressed trial. In support of this submission, my attention was drawn to Daya and Ors. Jai Narain and Ors. (1989)95 PLR 655,

where objections to decree were filed by third party alleging that they are in possession and are not bound by the decree. It was held that these

objections are maintainable. Objectors are entitled to interim order of injunction till final disposal of the objections. He also drew my attention to

Brahmdev Choudhary v. Rishikesh Prasad Jaiswal and Anr. 1997 (I). ACJ 222, wherein it was held that where a stranger who is in possession

resisted the execution of decree, in his own right, he has to be given opportunity of hearing before he is thrown out of possession and decree

executed. It was held that such a stranger has not first to vacate and then approach under Rule 99 CPC. The executing court was further directed

to re-decide the application as per the provisions of Order 21 Rule 97(2) read with Rule 98 CPC within three months and further no other

objection by any other person shall be considered. He drew my attention to Shreenath v. Rajesh 1998(1) Recent Civil Reports 454 where it was

held that where a third person is in possession of property claiming independent right as tenant and this third person was not party to the suit for

possession such a person can resist the decree by seeking adjudication of his objections finally under Order 21 Rule 97 CPC. The executing court

has to adjudicate the objections finally under Rule 101 CPC. The party has not to file fresh suit. This words ""any person"" used in order 21 Rule 97

CPC would include even a person not bound by a decree or claiming right in the property on his own. Order 21 Rule 97 reads as follows:

(1) Where the holder of a decree for the possession of immovable property the purchaser of any such property sold in execution of a decree is

resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such

resistance or obstruction.

(2) Where any application is made under sub-rule Sub-rule (1) the court shall proceed to adjudicate upon the application in accordance with the

provisions herein contained.

8. In Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, it was held that where a vendee obtains a decree for possession without

impleading the tenant, tenant could not be dispossessed by the transferee owner without due process of law. In Babulal Vs. Raj Kumar and

Others, the Hon''ble Supreme Court held that where in execution of a decree for specific performance of sale deed of property the objector who

was not a party to the decree filed an objection on the ground that he could not be dispossessed order of the executing court overruling the

objection holding that since he was not dispossessed, application under order 21 Rule 97 was illegal. Dispossession of the objector from the

property in execution, is not a condition for declining to entertain the application. An adjudication is required to be conducted under Order 21 Rule

98 before removal of the obstruction caused by the objector and a finding is required to be recorded in that behalf. The order is treated as decree

under Order 21 Rule 103 and it shall be subject to appeal. The executing court is required to determine the question when the objectors have

objected to the execution of decree against them saying that they were not party to the decree for specific performance.

9. Learned Counsel for the decree holders Smt. Sanjogta and others, on the other hand, submitted that the objections filed by the State of Punjab

under Order 21 Rule 97, CPC were dismissed and the appeal was also dismissed by the Addl. District Judge. Both the courts below dismissed

these objections mainly on the ground that State is not in possession. It cannot resist the claim of the decree-holder to possession. The property is

in possession of Harbans Kaur JD and the State of Punjab to protect her possession and to help her has filed objections. The judgment-debtor has

lost in appeal and even in objections upto the Hon''ble Supreme Court. Last objection was dismissed on 22.8.1996 in Civil Revision No. 3373 of

1996. The State has already filed suit claiming possession over plot No. 627 whereas decree relates to plot No. 626-L which is pending, Civil

Revision No. 1864 of 1997, filed by the State for the grant of interim injunction was also dismissed. It was submitted that all the points now sought

to be raised have been rejected by this Court.

10. State of Punjab has filed suit for declaration that it is owner of the plot

measuring 351 sq. yards out of plot No. 627 adjoining plot No. 626, Model Town, Ludhiana and the decree obtained by Smt. Sanjogta and her children against Harbans Kaur was a collusive decree, when they sought to execute the decree obtained by them against Harbans Kaur the State filed objections under Order 21 Rule 97 CPC. These objections were dismissed by the executing court. Then the State filed suit. In the suit the State prayed for the grant of interim injunction which was refused on the ground that no injunction can be granted against a decree lawfully obtained. Case of the State of Punjab was that the area measuring 351 sq.yards out of plot No. 627 adjoining plot No. 626-L, had been encroached upon by Harbans Kaur and she had sold it to others and interim injunction was not granted to the State of Punjab by the courts below. In Civil Revision No. 1864 of 1997 the High Court refused interim injunction to the State of Punjab. It was observed that if State of Punjab has title to the suit property; it has to establish title and after obtaining decree, it can recover the suit land from Smt. Sanjogta and others but there cannot be any injunction restraining the execution of the decree lawfully obtained. In Civil Revision No. 3373 of 1996, filed by Harbans Kaur this Court observed that if the decree was silent regarding dimensions and portion belonging to Harbans Kaur, the matter should have been sorted out when decree was passed. The second opportunity of sorting out that aspect was in the course of execution proceedings. While dismissing the objections of Harbans Kaur, report of the Local Commissioner was taken into account to which no objection had been raised.

11. Learned Counsel for the decree-holders (Respondents) submitted that this decree was obtained in the year 1977 in a suit filed in the year 1968. So far this decree has not been executed, Harbans Kaur filed objections. Her objections were dismissed by the executing court. When Harbans Kaur failed to achieve her object, the State of Punjab came to her rescue and filed objections. It was submitted that these objections could be disposed of summarily. No issue was required to have been framed. It was held in Usha Devi Vs. Parshadi Lal and Another, that objections filed under Order 21 Rule 97 CPC can be rejected at the threshold if they are frivolous and are intended to delay the process of law. It was held that it is settled that a third person who was not party to the suit

proceedings can also file objections and the court can entertain and decide such objections even in the execution proceedings. But these objections can be rejected at the threshold as being abuse of the process of law. In this case, the suit was filed in 1968 and decree was obtained in 1977. State of Punjab did not make any application under Order 21 Rule 101, CPC for being made party to the suit. Harbans Kaur filed appeal against the decree which was dismissed upto the High Court. The Special Leave Petitions was also dismissed. Harbans Kaur then filed objections. Her objections were also dismissed. After Harbans Kaur had failed, the State of Punjab came to her rescue and filed objections. In Harijan Wood Workers Production-cum-Sales Co-operative Society Ltd. Vs. Maya Wati and Another, it was held that if the decree is resisted or obstructed by any person in obtaining possession of the property, he can make an application under Rule 97 CPC complaining of the resistance or obstruction. The person causing resistance or obstruction is not entitled under that rule to make an application. However, if the decree-holder makes necessary application, the person causing resistance is entitled to defend his conduct. At that stage, he is entitled to be defensive but cannot take an offensive step. In case he wants to take such a step he can do so under Rule 99 but after surrendering possession. The Rule had to be framed to protect the decree-holder from frivolous claim by third persons. Therefore, any person other than the judgment-debtor cannot file an objection petition under R,97 on ground that he is not liable to ejectment in execution of a decree obtained by the decree-holder against the judgment-debtor. In Shiv Dayal v. Smt. Sulochna, 1999(2) RCR 669, it was held that if a third person claiming interest and title in the premises raises objections to the decree being executed, his objections should be adjudicated upon if prima-facie they appear to be bona fide. In case they are frivolous and on the face of it mala fide, the same should be dismissed. In Gul Mohammad Butt v. Mohinderpal and Ors. SLJ 1994 (3) 2180, the Hon''ble Himachal Pradesh High Court held that if the claim of the third party is also to be investigated by the executing Court it will cause great hard-ship. The third party has another remedy available to it to institute an independent civil suit for declaration of its title claiming therein the relief of temporary injunction to protect its possession. The bar provided under

Rule 101 of Order 21 CPC is not applicable to it. The third party has a right to move an application only to complain its dispossession as provided

in Rule 99 of Order 21 C.P.C.

12. Faced with this position, then learned Counsel for the State of Punjab submitted that only plot No. 626-L could be dealt with and not the

adjoining plot No. 627, Plot No. 627 measured 485 sq. yards, Sale of an area of 836 sq. yards was not warranted. Sale in excess of 485 sq.

yards would not confer any right or title in the decree-holder. That may be so but the executing court must execute the decree as it stands. Decree

dated 17.1.77 is before the executing court. If the State of Punjab feels that any area of adjoining Plot No. 627 has been sold the State of Punjab

can recover the possession of excess area by instituting a separate suit, but it cannot resist this decree.

For the reasons given above, this Execution Regular Second Appeal is dismissed.