

(2014) 04 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3835 of 2011(O&M)

Sukhbir Kaur

APPELLANT

Vs

Kartar Singh

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 9 Rule 13, 10, 39, 39(4)

Citation : (2014) 3 RCR(Civil) 439

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Ashish Aggarwal, Sr. Advocate and Ankit Aggarwal, Advocate for the Appellant; I.S. Ratta, Advocate for the Respondent

Judgement

Rakesh Kumar Jain, J.—This revision petition is directed against the order dated 15.04.2011 passed by the executing Court on an application filed by the petitioner u/s 39(4) of the Code of Civil Procedure, 1908 (in short "the CPC"). The brief facts of the case are that the respondent-Kartar Singh filed civil suit No. 63 against the petitioner (since deceased) for permanent injunction restraining her from selling, transferring or otherwise using and misappropriating the movable and immovable property inherited by her alongwith Lakshmi Bai, her mother-in-law, from her husband, Pritam Singh, including 2000 g.ms. of gold ornaments, eighty thousand rupees, lying in different banks and lockers and house No. 186-C (Prita Ghar) Model Town, Karnal. In the prayer clause of the said plaint, it was alleged that "it is, therefore, prayed that a decree for permanent injunction restraining the defendant No. 1 from selling, transferring or otherwise using and misappropriating the movable and immovable property mentioned in the heading of the plaint be granted in favour of the plaintiff with costs". The said suit was decreed in favour of the respondent-Kartar Singh exparte on 10.03.1983 and the decree reads as under:-

"It is ordered that an exparte decree is hereby passed in favour of the plaintiff and against the defendants restraining the defendant No. 1 from selling or

transferring the = shares of the movable and immovable property inherited by her along with her mother-in-law Luxmi Bai from her husband deceased Pritam Singh with costs."

2. The petitioner, instead of filing application under Order 9 Rule 13 of the CPC or filing an appeal against the exparte judgment and decree, chose to file suit at Karnal for declaration that the decree dated 10.03.1983 is illegal being fraudulent. The said suit is pending at Karnal. However, the respondent-Kartar Singh also filed another civil suit No. 484 at Ludhiana, for seeking declaration on the basis of the decree dated 10.03.1983. The proceedings in the said suit have already been stayed on an application filed by the petitioner u/s 10 of CPC.

3. While proceedings were pending, the respondent filed application for execution under Order 21 Rule 32 CPC alleging violation of the decree at the hands of judgment debtor/petitioner. According to learned counsel for the petitioner, there is only one application for execution available on record filed in the year 1983 and according to him, it does not spell out the manner of disobedience on the part of the petitioner. Be that as it may, the petitioner also moved an application u/s 39(4) of the CPC in which prayer was made for dropping the execution proceedings. The said application was contested by the respondent by filing reply and ultimately it has been dismissed by the executing Court by way of the impugned order. The reasons given by the executing Court while dismissing the application reads as under:-

"After taking into consideration the submissions made by both the sides and going through the file with their kind assistance, I am convincing with the submissions made by learned counsel for the respondent/decreed holder. I am of the considered view that said decree dated 10.3.83 was never challenged by Sukhbir Kaur or Gurmit Singh i.e. by filing appeal or revision or review and application under Order 9 Rule 13 CPC to challenge this decree which has become final and conclusive and could not be challenged in any suit in any court nor in this execution and this court has no jurisdiction to go against this decree. I am also of the considered view that applicant Gurmit Singh is contesting with malafide motive just to delay the decision. I am of the considered view that the executing court is not the court of appeal nor these proceedings of the suit can be stopped. I am also of the considered view that this court cannot go beyond the decree nor can challenge, amend, alter or nullify it even if the decree is wrong, erroneous of law and facts. The applicant/JD has failed to convince the court that the evidence adduced by the DH was false. I am convinced with the submissions made by learned counsel for the decree holder. On the other hand, I am not convinced with the submissions made by learned counsel for the applicant/JD. Accordingly, the application under consideration stands dismissed being devoid of merits."

4. Learned counsel for the petitioner has submitted that the petitioner is a resident of Karnal and the property involved in the suit No. 63 was also situated at Karnal. Thus, as per Section 39(4) of CPC the Court at Ludhiana was not

having jurisdiction to execute the decree dated 10.03.1983 and the said decree could have been executed, at the most, at Karnal after having been transferred to the competent Court. It is further submitted that the learned Court below while dismissing the application, has not made any reference to Section 39(4) of the CPC as the learned Court below has swayed with the fact that the exparte decree dated 10.03.1983 was not challenged by the petitioner by way of filing application under Order 9 Rule 13 or by appeal, revision or review. The provision of Section 39(4) has not been dealt with by the learned Court below either way. In support of his submission, learned counsel for the petitioner has relied upon decision of the Supreme Court in the case of Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others, He has also referred to judgments of different High Courts i.e. Mechano Paper Machines Ltd. Vs. NEPC Papers and Boards Ltd. and Others, , Penguin Alcohols Pvt. Ltd. Vs. Dr. K. Subbaramaiah, Proprietor of Proprietary Concern functioning under the name and style of The White Horse Distilleries and Andhra Pradesh Beverages Corporation, Limited, of Sri Pothula Ranga Rao Vs. The Ongole Tobacco Processing and Marketing Cooperative Society Ongole and Others of Andhra Pradesh High Court. It is submitted that in all these aforesaid judgments delivered by different High Courts, the basic judgment of Supreme Court in the case of Mohit Bhargava (supra) is followed in which it is held that executing Court cannot order sale of property of judgment debtor which is not within its jurisdiction and as per Section 39(4) CPC, a decree could be executed by the Court if the person or suit property is situated within its jurisdiction and if the person or property is situated outside the local limits of that Court, the decree has to be transferred. Learned counsel for the petitioner has further argued that injunction decree can be executed only in terms of Order 21 Rule 32 but for that purpose, the decree holder has to aver the manner in which the decree has been disobeyed. It is submitted that in application for execution which is on record, there is a reference that the decree has been violated but the decree is conspicuously absent. It is further submitted that the impugned order is patently illegal and has to be set aside. On the other hand, learned counsel for the respondent has vehemently argued that the petition itself in its present form is not maintainable because it was filed by Sukhbir Kaur, who died long before filing the revision and had been replaced by Gurmit Singh, who alleged himself to be her adopted son. It is submitted that there is no adoption by Sukhbir Kaur of anyone and this point has to be decided. He has further submitted that even application filed u/s 39(4) was not maintainable with the prayer that the execution proceedings be dropped because as per Section 39(4), the execution proceedings can only be transferred. In support of his submission, he has referred to a judgment of the Patna High Court rendered in Indian Oil Corporation v. The State of Bihar, decided on 01.03.2013 in which there was an application filed u/s 39 Sub-section 4 of CPC and prayer was made for dropping the executing proceedings but the Court had held that the proceedings cannot be dropped and the prayer was wrongly made.

5. I have heard learned counsel for the parties and examined the record. There is

no dispute that in the suit No. 63 filed by Kartar Singh/deed holder, the address of the petitioner has been shown to be of Karnal. There is no reference of other properties which are lying at various places and the case has been filed about the house No. 186-C (Prita Ghar) Model Town which is also in Karnal. The prayer made in the suit also says that the deed-holder wants to restrain defendant No. 1 from selling, transferring or otherwise using and misappropriating the movable and immovable property mentioned in the heading of the plaint. The heading of the plaint does not talk of any specific property except for some gold bullion and eighty thousand rupees lying in different banks and lockers but the place of those lockers is not specifically mentioned, rather there is a reference of one house, which is also in Karnal. Be that as it may, Section 39(4) which has been introduced by the Legislature by Act No. 22 of 2002 provides that "nothing in this Section shall be deemed to authorize the Court which passed a deed to execute such deed against any person or property outside the local limits of its jurisdiction". According to this provision, a deed could be executed by the Court if the person or suit property is located within its jurisdiction and if the person or property is situated outside the local limits of that Court, the deed has to be transferred and in this regard the judgment rendered by the Supreme Court in the case of Mohit Bhargava v. (supra) is fully applicable because in that case property was situated at Indore and deed was granted at Gwalior. Unfortunately, the trial Court while dismissing the application, did not make any reference to Section 39(4), which is a serious flaw in the impugned order, though according to the petitioner, the written arguments were also given to the Court. In so far as, the question of disobedience on the part of petitioner is concerned, as projected by learned counsel for the petitioner, the execution application was silent about the manner of violation of the deed dated 10.03.1983. It is for the executing Court to find out as to whether there is any disobedience on the part of petitioner for the purpose of pursuing the execution. But at this stage, on the application filed u/s 39(4) of CPC, the executing Court is required to opine about its effect on the facts and circumstances of the case especially when the deed was passed in regard to the property and the person, who are both at Karnal and beyond the jurisdiction of the Court at Ludhiana. Both the learned counsel for the parties are ad idem that the judgment of the trial Court be set aside and the matter be remanded back to the executing Court to decide it afresh while taking into consideration Section 39(4) of CPC as well and also opine about the adoption deed on the basis of which application filed before this Court bearing No. 9526-CII of 2013 has been allowed by which Gurmit Singh has been impleaded as legal heir of Sukhbir Kaur. Consequently, the impugned order is hereby set aside and the matter is remanded back to the executing Court to decide it afresh in the light of Section 39(4) of the CPC and as to whether there is any violation of the deed dated 10.03.1983. Parties are directed to appear before the executing Court on 26.05.2014. The record of the case which has been summoned by this Court be send back.