



CR-2950 & 2951 of 2016 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-2950-2016 (O&M)

Surinder Kaur

... Petitioner

Versus

Vijay Kumar and others

.. Respondents

CR-2951-2016 (O&M)

Manjit Kaur and another

... Petitioners

Versus

Vijay Kumar and others

.. Respondents

Date of Decision: 16.01.2025

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate for the petitioner(s).

Mr. H.K. Aurora, Advocate for the contesting respondents.

Mr. Rishav Jain, Advocate and
Mr. Varun Jain, Advocate for respondents No.4(i) to (vii).

Pankaj Jain, J. (Oral)

By way of this order, I intend to dispose of two revision petitions impugning the orders whereby objections filed by the LRs of JD as well as those preferred by third party i.e. subsequent purchasers, stand declined. 3rd



party objectors are purchasers subsequent to agreement to sell in favour of decree-holder.

2. Madan Gopal and Vijay Kumar Kaushal filed suit seeking decree of specific performance of agreement to sell dated 06.11.1980. It was claimed that Joginder Singh Atwal acting as attorney-holder of Narender Kaur and Ajit Kaur, his sister and mother respectively, agreed to sell land ad measuring 04 kanal 18 marlas and 115 sq. feet in favour of plaintiff for a valuable consideration of Rs.3.85 lacs. It was averred that the parties agreed to get the sale deed executed on or before 30.04.1981. The suit was contested by Narender Kaur, Ajit Kaur as well as Joginder Singh Atwal. The suit was decreed by the Court of first instance. The decree was maintained by lower Appellate Court and further by this Court in RSA Nos.2186 of 1989 and 3284 of 2002.

3. During the pendency of the suit, Narender Kaur and Ajit Kaur through Gulzar Singh Gacha, another attorney further executed different sale deeds. The purchasers filed application under Order 1 Rule 10 CPC seeking impleadment in the first appeal. The same was dismissed. The order was challenged in Civil Revision No.2723-1989. The same was also dismissed vide order dated 05.12.2012. Review application was also dismissed. The issue was taken before the Apex Court vide the SLP No.(CC) 13655-2013. Before the Supreme Court, the petitioners expressed their intent to file separate suit assailing the decree claiming that the same was obtained by fraud and



collusion. The Special Leave Petition was disposed off noticing the intent expressed by the petitioners.

4. The purchasers filed separate suits. They also preferred third party objections raising challenge to the execution of the decree. The objections stand rejected vide impugned orders.

5. While issuing notice of motion in civil revision on 28.04.2016, this Court observed as under:-

“On instructions, the senior counsel appearing on behalf of the petitioners states that he will elect to prosecute the objections filed as third party at the stage of execution challenging the decree obtained as collusive and gives up right to prosecute the suit independently filed challenging the decree as collusive. The statement is recorded and will bind the parties at all times.

Notice of motion for 17.08.2016.

Dispossession is stayed.

The petitioner is directed to deposit Rs.5 lacs in each case to express her bona fides for security of costs and for retaining the benefit of continuance in possession pending application within a period of two weeks from the date of receipt of copy of this order, failing which the stay granted shall stand vacated. The amount shall remain in deposit to the credit of the case and it will abide by further direction at the stage of disposal of the revision petition.

A photostat copy of this order be placed on connected case.”

Mr. Jhanji, submits that pursuant to the abovesaid order, the suits were withdrawn.

6. While assailing the impugned orders, Mr. Jhanji submits that objections to the decree was on the ground of fraud and collusion. He submits



that after death of Joginder Singh Atwal-defendant No.3, defendants No.1 and 2-Ajit Kaur and Narender Kaur ought to have been served afresh. There was serious dispute with respect to vakalatnama filed on behalf of defendant Nos.1 and 2. However, the entire controversy has been overlooked by the Executing Court while dismissing the objection petitions filed by the petitioners. He further submits that even if, it is taken that the sale deeds in favour of the petitioners were barred by doctrine of *lis pendens*, the same would not be void and the petitioners have right to prove the legality thereof. They are within their right to object to the execution of decree by proving the fraud and collusion.

7. Different set of objections have been filed at the behest of judgment debtor and subsequent purchasers. CR No.2951 of 2016 arises out of objections filed by judgment debtor. CR No.2950 of 2016 arises out of objections filed by subsequent purchasers. Since subsequent purchasers are claiming under decree-holders only and are bound by the fate of judgment debtors, this Court deems it apt to take CR No.2951 of 2016 as a lead case. The law with respect to scope of interference by the Executing Court under Section 47 CPC, is well settled. Supreme Court in the case of **Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan, (2017)**

5 SCC 371 observed as under:-

“20. It is no longer res integra that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An



erroneous decree cannot be equalled with one which is a nullity. There are no intervening developments as well to render the decree unexecutable.

21. *As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.*

23. *Though this view has echoed time out of number in similar pronouncements of this Court, in Dhurandhar Prasad Singh v. Jai Prakash University (Dhurandhar Prasad Singh v Jai Prakash University, (2001) 6 SCC 534: AIR 2001 SC 2552), while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing. None of the above eventualities as recognised in law for rendering a decree unexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this*



adjudication by multiplying the decisions favouring the same view.

24. Having regard to the contextual facts and the objections raised by the respondent, we are of the unhesitant opinion that no case has been made out to entertain the remonstrances against the decree or the application under Section 47 CPC. Both the executing court and the High Court, in our comprehension, have not only erred in construing the scope and ambit of scrutiny under Section 47 CPC, but have also overlooked the fact that the decree does not suffer either from any jurisdictional error or is otherwise invalid in law. The objections to the execution petition as well as to the application under Section 47 CPC filed by the respondent do not either disclose any substantial defence to the decree or testify the same to be suffering from any jurisdictional infirmity or invalidity. These are therefore rejected.”

8. The objectors have pleaded fraud. It has been claimed that decree being result of fraud and collusion is in nullity. As per the record, the precise contention was raised before this Court in regular second appeal. The observations made by this Court have been reproduced by Executing Court in the impugned order. The same read as under:-

“13. On a careful perusal of Ex.P1 agreement for sale dated 06.11.1980, it is found that the 3rd defendant describing himself as attorney of 1st and 2nd defendants executed the agreement for sale on their behalf.

15. The 3rd defendant has executed Ex.P1 agreement for sale describing himself as an attorney of the 1st and 2nd defendants. It has to be seen whether he had the authority to



act on behalf of the 1st and 2nd defendants. The 1st and 2nd defendants through their power of attorney who was examined as DWI have categorically admitted that an agreement to sale dated 06.11.1980 was executed by the 1st and 2nd defendants through their attorney, 3rd defendant in the suit.

16. The 3rd defendant conferred authority on his counsel C.D Aggarwal to act not only on his behalf, but also on behalf of 1st and 2nd defendants. He also filed memo of appearance on behalf of 3rd defendant on the strength of the authority given to him by the 3rd defendant on his behalf and also on behalf of defendants no. 1 and 2. Written statement also was filed by the 3rd defendant on behalf of defendants no.1 to 3. Proper vakalat was given thereafter by defendants no. 1 and 2 on 05.08.1985 to Sh. Hari Datt, Advocate. The 1st and 2nd defendants had not disputed the fact that the written statement was filed by the 3rd defendant on their behalf also on 01.09.1983. In my considered view, there is an implied ratification by 1st and 2nd defendants by their conduct the act of 3rd defendant in appointing an advocate for them also for filing written statement. Thus, written statement filed by 3rd defendant on their behalf has been impliedly ratified by 1st and 2nd defendants. Even otherwise, the evidence given by DW1, the power of attorney of 1st and 2nd defendants categorically admitting the act of the 3rd defendant on behalf of 1st and 2nd defendant cannot be lost sight of.

22. In the instant case, I find that the plaintiffs have established that defendants no.1 and 2 through 3rd defendant have executed a valid and enforceable agreement for sale. I have already held that non- production of power



of attorney executed by 1st and 2nd defendants in favour of the 3rd defendant to enter into an agreement for sale would not invalidate the agreement for sale nor would it make unenforceable.”

9. Faced with the situation, Mr. Jhanji, Senior Advocate submits that fresh evidence in the form of forensic report has surfaced which was not available during suit.

10. In the considered opinion of this Court, the fraud claimed by the judgment debtors and subsequent purchasers cannot be said to have much bearing on the merits after defendants-JDs contested lis in appeal. The fraud pleaded is with respect to appointment of Advocate. The same pales into insignificance after JDs contested the lis tooth and nail upto this Court. In fact by raising objections, petitioners are in a way seeking review of judgment and decree suffered by them. Even the review would not be maintainable as the evidence claimed by the objectors is not of such character that the same may lead to alteration in the merits of the case. Mere discovery of new evidence is not sufficient ground for maintaining objections under Section 47 CPC.

11. The objectors in the present case cannot deny that the sale deeds/agreements to sell propounded by them are subsequent to the agreement to sell propounded by the decree-holders. In view of Section 19 of the Specific Relief Act, 1963, the only ground available to the objectors to *lis* was to prove that they were *bona fide* purchasers. No infirmity has been pointed out in the findings of facts recorded by the Executing Court with respect to the objectors being not *bona fide* purchasers.



12. In view of the above, the petition stands dismissed.
13. Pending application, if any, shall stand disposed of accordingly.

(PANKAJ JAIN)
JUDGE

January 16, 2025

A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No