



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

**RSA-234-2019 (O&M)
Judgment reserved on 10.09.2025
Judgment pronounced on 30.09.2025**

VASDEV (SINCE DECEASED) THROUGH LRS AND OTHERS

... APPELLANTS

VERSUS

**HARKRISHAN SINGH (SINCE DECEASED) THROUGH LRS AND
ORS.**

...RESPONDENTS

RSA-1224-2019 (O&M)

OM PARKASH (SINCE DECEASED) THROUGH LRS. ... APPELLANTS

VERSUS

**HARKISHAN SINGH (SINCE DECEASED) THROUGH LRS. AND
OTHERS.**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

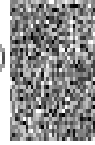
Present: Mr. Arun Nehra, Advocate and
Mr. Sant Kashyap, Advocate
for the appellants.

Mr. H.S. Dhandi, Advocate
for respondent Nos. 1(ii), (iv) and (v).

Mr. Munish Bhardwaj, Advocate (through V.C.)
for respondent Nos. 2 to 4

PARMOD GOYAL, J.

CM-2920-C-2019 in RSA-1224-2019



This is an application for condonation of delay of 9 days in refiling the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 9 days in refiling the present appeal, is hereby condoned.

Main Case(s)

1. Appellants-Defendant Nos. 1 and 4 have preferred two appeals and are aggrieved by the judgment and decree dated 26.03.2015 passed by the Civil Judge (Junior Division), Rajpura, and the judgment and decree dated 01.08.2018 passed by the First Appellate Court presided over by the Additional District Judge, Patiala, whereby the suit for possession and permanent injunction filed by the plaintiffs was decreed and the decree was upheld in appeal.

2. The plaintiff-respondent, in their suit for declaration and permanent injunction, had asserted that on 29.05.2006, he participated in a court auction, wherein Shop No. 2 and Shop No. 3-part of House No. 1508, Rajpura Town were put to auction. The plaintiff emerged as the highest bidder for a sum of ₹1,90,000/- and, in accordance with the auction conditions, he duly deposited one-fourth of the bid amount at the spot with the Court auctioneer. The plaintiff further alleged that, during the pendency of recovery suit filed by defendant No. 5, defendant Nos. 1 to 3 deliberately and fraudulently executed a sale deed of the said two shops in favour of defendant No. 4. However, the said sale deed was held to be attempt to avoid debt by the Court of Additional Civil Judge (Senior Division), Rajpura, vide order dated 17.03.2006. This order was affirmed by this Court vide order dated 23.05. 2006, holding that the sale executed by defendant Nos. 1 to 3 in favour of defendant No. 4 was the result of fraud committed upon the decree holder and the Court. On 11.07.2007, the auction sale was confirmed



by the Court, the remaining sale consideration was deposited, and the plaintiff became the owner in possession of the shops in question.

3. That during the pendency of execution proceedings, and after confirmation of the sale, the plaintiff-respondent moved an application for possession and for issuance of the sale certificate. However, the decree holder and the appellants-defendants (judgment debtors), in collusion with each other, intentionally compromised the matter, and the decree holder withdrew the execution petition. The objections filed by defendant No. 4 were dismissed, and the Executing Court granted liberty to the plaintiff to file a separate suit or seek his remedy under Order 21 CPC. That since defendant Nos. 1 to 4, in order to defeat the rights of the plaintiff, were attempting to sell the shops and alter the nature of the property, and had failed to deliver possession of the shops. Hence, the present suit was filed.

4. On notice, defendant No. 1 asserted that the plaintiff failed to disclose his source of income and the identity of the person who informed him about the date of auction. It was contended that one Manoj Kumar had actually placed a higher bid of ₹2,25,000/-, but the bid sheet was allegedly manipulated, and the auction was result of such manipulation. It was further asserted that the shops were sold to defendant No. 4 on 25.09.2002, much prior to the passing of the decree dated 01.05.2003. Although the auction sale was confirmed, it was argued that no sale certificate was ever issued since an appeal had been filed by Om Parkash appellant-defendant No. 4 and possession was never delivered to the plaintiff. That in the absence of a sale certificate, the plaintiff's ownership could not be legally established, and that an appeal filed by defendant No. 4 was still pending. Accordingly, dismissal of the suit was prayed for.



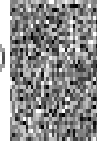
5. Defendant No. 4 adopted similar pleas as were taken by defendant No. 1. He asserted that he had purchased the shops on 25.09.2002, i.e., prior to the passing of the decree dated 01.05.2003. He denied the ownership of the plaintiff over the said shops and further alleged that the provisions of Order XXI Rule 54, Rule 64, and Rule 67 of the Code of Civil Procedure (CPC) were not complied with during the auction proceedings. It was also stated that he had already filed a suit for declaration concerning the property in question. Accordingly, he prayed for the dismissal of the present suit.

6. On the basis of the pleadings of the parties, the following issues were framed:

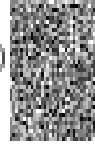
- “1. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP.*
2. *Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*
3. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.*
4. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
5. *Whether the suit is time barred? OPD*
6. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
7. *Whether the plaintiff has not come to the court with clean hands? OPD*
8. *Relief.”*

7. From the pleadings and evidence led by both the parties, following facts are not in dispute and are clearly made from pleadings and evidence on record:

- (i) A suit was filed by Channan Singh (defendant No. 5) against



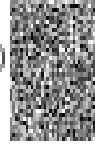
- defendant Nos. 1 to 3 for recovery of outstanding amount.
- (ii) During the pendency of the said suit, defendant Nos. 1 to 3 sold Shop Nos. 2 and 3 subject matter of the present appeal to appellant-defendant No. 4, Om Parkash, vide sale deed dated 25.09.2002.
 - (iii) The suit bearing No. 288 dated 19.03.1988, filed by Channan Singh (defendant No. 5), was decreed by the Civil Court vide judgment and decree dated 01.05.2003.
 - (iv) The decree holder (Channan Singh) filed an execution petition.
 - (v) In the execution proceedings, the Court ordered the attachment and auction of Shop Nos. 2 and 3, which were owned by defendant Nos. 1 to 3.
 - (vi) Objections were filed by appellant-defendant No. 4 - Om Parkash claiming property to be owned by him on the basis of sale-deed dated 25.09.2002. Objections were dismissed and the sale deed dated 25.09.2002 executed in favour of defendant No. 4 (Om Parkash) was held to be result of fraud played upon the decree holder and the Court vide order dated 17.03.2006, passed in Execution Petition passed by the Additional Civil Judge (Senior Division), Rajpura.
 - (vii) Findings dated 17.03.2006 were confirmed by the Hon'ble Punjab and Haryana High Court vide order dated 23.05.2006.
 - (viii) During the pendency of the execution proceedings, Shop Nos. 2 and 3 were put to public auction by the Court.
 - (ix) Plaintiff-respondent No. 1 was the highest bidder in court auction conducted on 29.05.2006 and deposited 25% of the bid amount in accordance with the auction conditions. Vide Ex. P-2, the plaintiff deposited Rs.47,500/- (25% of bid amount) with the treasury.
 - (x) Vide order dated 11.09.2007 (Ex. PW-3/A), the objections filed by defendant No. 4 (Om Parkash) were dismissed, and the sale in favour of plaintiff-respondent No. 1 was confirmed.



- (xi) Plaintiff deposited the remaining 75% of the auction amount as per the prescribed conditions. The remaining Rs.1,42,500/- (75%) was deposited vide Ex. P-1.
- (xii) The confirmation of sale and the dismissal of objections by Om Parkash were challenged before the Appellate Court, which also dismissed the appeal vide order dated 04.11.2009.
- (xiii) Subsequently, defendant Nos. 1 to 3 and defendant No. 5 (the decree holder) compromised the matter, and the execution petition was withdrawn by the decree holder on 26.04.2008.
- (xiv) While disposing of the execution petition as withdrawn, the Executing Court granted liberty to plaintiff-respondent No. 1 to avail remedy under Order XXI CPC or by filing a separate suit.
- (xv) The auction notice indicating the date of auction as 29.05.2006 was placed on record as Ex. P-3, and the site plan was placed as Ex. P-4.

8. From the facts noted above, it is clearly established that defendant No. 5 had filed a suit for recovery in the year 1988, during the pendency of which defendant Nos. 1 to 3 executed sale deed dated 25.09.2002, transferring the suit property in favour of defendant No. 4. The suit by defendant No. 5 was decreed vide judgment and decree dated 01.05.2003, and execution proceedings were thereafter initiated by the decree holder.

9. During the pendency of execution, defendant No. 4 filed objections against the auction of the suit property, claiming ownership by virtue of the sale deed dated 25.09.2002, which had been executed during the pendency of the original suit and prior to the passing of the decree. These objections were dismissed by the Executing Court vide order dated 17.03.2006, wherein the sale in favour of defendant No. 4 was held to be fraudulent and executed solely with the intent to defeat recovery of the decretal amount.

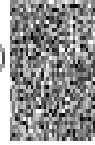


10. The suit property was thereafter put to auction on 29.05.2006. Meanwhile, the dismissal of objections and the finding of fraud recorded by the Executing Court in its order dated 17.03.2006 were affirmed by the Revisional Court vide order dated 23.05.2006. Consequently, the order dated 17.03.2006 dismissing the claim of defendant No. 4 and declaring the sale dated 25.09.2002 as fraudulent attained finality.

11. On 29.05.2006, the plaintiff participated in the court auction and was declared the highest bidder. In accordance with the auction terms, he deposited 25% of the bid amount in the treasury, as evidenced by challan Ex. P-2. The matter was thereafter taken up for confirmation of sale, which was duly confirmed by the Court vide order dated 11.09.2007. By the same order dated 11.09.2007, not only was the sale confirmed in favour of the plaintiff, but the second set of objections raised by defendant No. 4, Om Parkash, against the auction of the suit property were also rejected.

12. The appeal preferred by the appellant-defendant No. 4 against the order dated 11.09.2007 was also dismissed vide order dated 04.11.2009 (Ex. D-2). Accordingly, the order dated 11.09.2007, confirming the sale and dismissing the objections of defendant No. 4, attained finality, as it has not been shown to have been challenged further before any higher forum.

13. From the above facts, it is therefore evident that the issue of auction cannot be reopened in the present suit. The sale was confirmed vide order dated 11.09.2007, which has attained finality upon the dismissal of the appeal against it vide order dated 04.11.2009 (Ex. D-2). Hence, any objections raised by the defendants regarding the conduct of the auction, its mode and manner, or the rights of the parties therein, cannot be entertained at this stage.

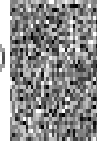


14. It is thus held that upon confirmation of the auction, the plaintiffs/respondents became the absolute owners of the suit property.

15. Faced with the fact that the sale stood confirmed by the Executing Court, learned counsel for the appellants argued that since the sale certificate has not been issued, the plaintiff-respondent No. 1 has no right over the suit property. However, this argument is wholly fallacious. Issuance of the sale certificate is a clerical formality that follows the confirmation of the sale. Once the sale is confirmed, the transfer of ownership becomes absolute, vesting the ownership in the person in whose favour the sale has been confirmed.

16. My above view finds support from the judgment of the Supreme Court in *Pattam Khader Khan v. Pattam Sardan Khan*, 1996 (2) Civil C.C. 1, wherein it was held that the title of a Court auction purchaser becomes complete upon confirmation of the sale under Order 21, Rule 92 CPC, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale. The certificate of sale, by itself, does not create any title but merely evidence thereof. The sale certificate rather is a formal acknowledgement of a fact already accomplished, stating as to what stood sold. Such act of the Court is prestinely a ministerial one and not judicial. It is in the nature of a formalisation of the obvious.

17. Therefore, as far as the title of the present plaintiff-respondent is concerned, it became absolute on 11.07.1997, when the sale was confirmed. Furthermore, with the affirmation of the order dated 11.09.2007 by the Appellate Court vide its order dated 04.11.2009 (Ex. D-2), it is clearly established that the plaintiff-respondent No. 1, being the auction purchaser, is the absolute owner of shop Nos. 2 and 3.

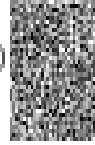


18. The main dispute in the present appeal pertains to the possession of the shops. One of the principal arguments raised on behalf of the appellants-defendants is that once the sale was confirmed on 11.09.2007, the plaintiff could only seek possession within one year under the provisions of Article 134 of the Limitation Act. Accordingly, it is contended that the plaintiff ought to have filed the suit for possession by 10.09.2008. Since the present suit was filed on 29.03.2009, it is argued that the claim for possession is barred by limitation, and therefore, possession of the property cannot be granted in these proceedings.

19. In support of their contentions, the appellants have relied upon the judgments of the Supreme Court in *Harnandrai Badridas v. Debidutt Bhagwati Prasad and others*, 1973 (2) SCC 467; *K.R. Lakshminarayana Rao v. New Premier Chemical Industries*, 2005 (9) SCC 354; *Bhasker and another v. Ayodhya Jewellers*, Civil Appeal No. 3844 of 2023; as well as the judgment of the Karnataka High Court in *D. Rangappa v. G. Mudlappa and others*, 2005 (4) RCR (Civil) 461.

20. On the other hand, learned counsel for the respondents argued that the present suit was filed by the plaintiff-respondent No. 1 in compliance with the directions of the Executing Court within one year of those directions and, therefore, the plaintiff is entitled to possession. The issue of limitation under Section 134 would not arise in view of the Executing Court's order dated 11.07.2007. The objections raised on behalf of the appellants are liable to be rejected on the following twin grounds.

21. Even if it is held that an application under Order 21, Rule 95 CPC, which ought to have been filed within one year from possession, was not filed within limitation, even then, the present suit is maintainable. It is important to

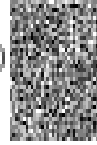


note that Order 21, Rule 95 CPC only provides an expeditious remedy to an auction purchaser to obtain possession within one year from the date of confirmation of sale. This is a special remedy and does not exclude the owner's right to seek possession from an unauthorized occupant of the property owned by him. The judgment debtor/objector, who fails to challenge the confirmation of sale ordered by the Court, becomes an unauthorized occupant of the property sold to the auction purchaser and has no right to possess the property.

22. Accordingly, the auction purchaser has two distinct rights: (1) to seek expeditious possession by moving an application within one year under Order 21, Rule 95 CPC, and (2) to exercise the general right to seek possession by way of suit. In the present case, the status of appellant-defendant No. 1 and defendant No. 4 is no more than that of unauthorized occupants of the suit property, of which the plaintiff-respondent No. 1 is the absolute owner, as confirmed by the Court's order dated 11.09.2007.

23. Therefore, the plaintiff-respondent's right as an owner to seek possession from unauthorized occupants under general law is not curtailed by the remedy provided under Order 21, Rule 95 CPC for auction purchasers. Both remedies operate independently and are not mutually exclusive. This view is supported by the judgment cited by the appellants themselves in Pattam Khader Khan (supra). For ready reference, paragraph 13 of the judgment is reproduced below:

“13. There can be a variety of factors conceivable by which delay can be caused in issuing the sale certificate. The period of one year limitation, now prescribed under Article 134 of the Limitation Act 1973, in substitution of a three-year period prescribed under Article 180 of the Indian Limitation Act of 1908, is reflective of the legislative policy of finalizing proceedings in execution as quickly

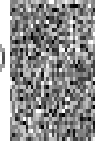


as possible by providing a quick forum to the auction-purchaser to ask delivery of possession of the property purchased within that period from the date of the sale becoming absolute, rather than from the date of issuance of the sale certificate. On his failure to avail such quick remedy the law relegates him to the remedy of a suit for possession in a regular way.”

24. From the above-noted passage from the Hon’ble Supreme Court, it is clearly established that if an auction purchaser fails to avail the expeditious remedy under Order 21, Rule 95 CPC, the law permits him to seek possession through a regular suit. In the present case, the right of the plaintiff-respondent No. 1 to the suit property became absolute upon the confirmation of sale vide order dated 11.09.2007. The plaintiff could have either filed an application under Order 21, Rule 95 CPC seeking possession within one year from the date of confirmation of sale or alternatively, was entitled to seek possession by way of a regular suit within the prescribed limitation period of Twelve years.

25. The date of confirmation is 11.09.2007, and the present suit was filed by the plaintiff-respondent No. 1 on 29.03.2009, which is well within the limitation period for seeking possession from an unauthorized occupant of the suit property, of which the plaintiff is the absolute owner. Therefore, irrespective of the limitation period under Article 134 of Limitation Act, the suit filed by the plaintiff is independently maintainable.

26. It is also pertinent to note that the suit property is admittedly in the possession of appellant-defendant Vasudev, who, while appearing as DW-1, admitted that his sons (now legal representatives in the present case), namely Raj Kumar and Munish Kumar are running their respective businesses in the shops. Moreover, appellant Om Parkash, who claims to have purchased the suit property, has admitted the possession of defendant No. 1 over the property. The



fact that the sons of defendant Vasudev are conducting their business on the suit property, as admitted during cross-examination of DW-1 and DW-2, corroborates the existence of collusion and an unholy alliance to deny the rights accrued to the plaintiff as an auction purchaser.

27. Even if it is held that an application for possession under Order 21, Rule 95 CPC could only be filed within one year from the date of confirmation, possession could still have been sought within one year from the order passed by the Executing Court dismissing the execution petition at the request of the decree holder and judgment debtors, in view of the facts and circumstances of the present case.

28. In the present case, it is undisputed that the sale was confirmed in favour of the plaintiff-respondent No. 1 on 11.09.2007. Subsequently, the matter remained pending regarding the issuance of the sale certificate and the delivery of possession as prayed for by the plaintiff-respondent No. 1. However, before the expiry of one year, the Executing Court dismissed the execution petition and granted liberty to the plaintiff-respondent No. 1 to approach the Executing Court either by way of an independent application or by filing a separate suit. The executing court ought to have issued sale certificate & delivered possession before allowing withdrawal, however it rather dismissed the execution as withdrawn. It is a cardinal principle of law that the act of the Court cannot prejudice any party to the proceedings. Since it was the decree holder and judgment debtor who sought the withdrawal of the execution petition, no fault or prejudice can be attributed to the appellant on this ground. Moreover, since appeal against order of confirmation of sale was pending and was decided on 04.11.2009, therefore also the limitation would run from 04.11.2009 as order of

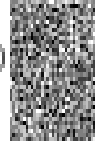


executing court would merge in appellate order.

29. In view of the special facts and circumstances of the present case, as noted above, and considering the order passed by the Executing Court on 26.04.2008 no prejudice can be caused to the rights of the auction purchaser. The limitation period in a case where the Court itself grants permission to the decree holder would, in fact, commence from the date of such order, and one year would lapse on 25.04.2009. Since the suit was filed before this date, it cannot be held to be barred by limitation. It is an established principle of law, as reflected in the cited authorities, that the limitation period under Section 134 begins to run from the date of confirmation of sale and not from the date of issuance of the sale certificate. Further, it is equally settled that the suit for possession, as a remedy in addition to seeking possession in execution proceedings, is always available to an auction purchaser in whose favour the auction has been confirmed. Upon confirmation, the auction purchaser becomes the absolute owner of the suit property and has the right to seek possession from any person who is in unauthorized possession. This right exists independently and in addition to the remedy available under Order 21 Rule 95 CPC & Article 134 of Limitation Act to seek possession within one year in execution proceedings. Consequently, both the appeals preferred by the appellants are liable to be dismissed. It is evident that the appellants have attempted to delay the delivery of possession by raising frivolous objections in collusion with each other.

30. Learned counsel for the respondents has prayed for mesne profits.

31. Considering the facts and circumstances of the case, the plaintiff-responder No. 1 is relegated to seek his remedies for mesne profits against the



defendants in accordance with law.

32. Both the appeals are accordingly, are dismissed.

33. Pending miscellaneous application(s), if any, shall also stand disposed of.

30.09.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes