



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-2546-2025 (O&M)
Date of decision: 29.04.2025

Jitender Aggarwal

...Petitioner(s)

Vs.

Sohan Lal and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Saurabh Arora, Advocate as
Legal Aid Counsel for the petitioner.

NIDHI GUPTA, J.

The present civil revision petition has been filed under Article 227 of the Constitution of India, by the plaintiff/decreed holder for setting aside the impugned order dated 12.07.2024 (Annexure P-13) passed by learned Additional District Judge, Gurugram in CM-7359-2022 in the case titled as "*Jitender Aggarwal vs. Sohan Lal*" and proceedings be allowed to be continued against all the parties impleaded in the said case.

2. It is submitted by learned Legal Aid Counsel representing the petitioner that the impugned order dated 12.07.2024 (Annexure P-13) deserves to be set aside as the learned Courts below have erred in not considering the fact that respondent No.5 was not competent to file any application seeking dispensation of service of respondent No.1. It is submitted that the suit and the execution petition had been filed by the petitioner. In the event that any such application for dispensation of service



of judgment debtor/respondent No.1 was to be filed, it was to be filed by the petitioner. Respondent No. 5 was not even a party to the suit and was therefore, not competent to file any such application.

3. It is submitted that learned Courts below have failed to take into consideration the fact that impugned order would ultimately effect passing of the judgment and decree dated 05.03.2008 (Annexure P-2) whereby the civil suit filed by plaintiffs would be rendered ineffective; especially in view of the fact that the said judgment and decree dated 05.03.2008 was never challenged by the party.

4. Further in passing the impugned order, learned Additional District Judge, Gurugram who had passed judgment and decree dated 05.03.2008, has also failed to consider that the objectors/respondents No. 2 to 5 were never impleaded as party before the learned Civil Court. The said respondents had only approached the Executing Court when the judgment and decree dated 05.03.2008 was going to be executed and had filed the objections before the said Court.

5. It is lastly submitted that the learned Court below has also failed to consider that the application filed by both sides for impleading legal representatives of respondent No.1 already stood dismissed by the learned Additional District Judge, Gurugram vide order dated 26.07.2019. The said order was never challenged by LRs of Sohan Lal/respondent No.1 before any Court of law.

6. Further, vide the impugned order dated 12.07.2024, the Court has blown hot and cold in the same breath as on one hand the service of



respondent No.1 Sohan Lal has been ordered to be dispensed with on the ground that Sohan Lal has since passed away and implement of a dead person itself could not have happened and decree qua dead person is nullity in law. Whereas, on the other hand in the concluding part of the impugned order, the learned Court below has granted opportunity to respondent No.5 to implead the legal representatives of his father-respondent No.4. This action of the Court below is discriminatory in nature and the impugned order dated 12.07.2024 is liable to be set aside on this ground alone.

7. No other argument is raised on behalf of the petitioner/plaintiff.

8. I have heard learned counsel for the petitioner/plaintiff and perused the case file in great detail.

9. I find no merit whatsoever in the submissions made on behalf of the petitioner. The undisputed facts on record are that on 14.09.2005, the petitioner/plaintiff along with his father Jai Dev Aggarwal had filed a suit for redemption of usufructuary mortgage with possession against defendant Sohan Lal in terms of Mortgage Deed No. 271 dated 07.12.1940, in respect of the suit shops. The said suit was decreed ex parte by the learned Civil Judge, Senior Division Gurugram vide judgment and decree dated 05.03.2008 (Annexure P-2). The said judgment and decree dated 05.03.2008 had attained finality as no appeal was filed against the same.

10. The petitioner then filed execution petition dated 28.10.2010 (Annexure P-3) to get the said judgment and decree dated 05.03.2008



executed. At this stage, Objections to the said execution petition were filed on 23.02.2011 (Annexure P-4) by respondents No. 2 to 5 herein, *inter alia* pleading therein that the plaintiff/deGREE holder had obtained the decree by playing fraud and by misrepresentation. It was stated that the decree holder was not owner of the shops in question; that the respondents No. 2 to 5 were the auction purchasers of the said shops; that the Auction was confirmed vide order dated 20.12.1950 and sale certificate was issued in favour of the objectors on 06.05.1951. It was further stated that the said auction was never set aside by any Court till date. It was pointed out that objectors have been running their business in the said shops since 1950-1951. It was pointed out that on the date of filing of the suit i.e. on 14.09.2005, the plaintiff was not owner of the shops in question nor Sohan Lal was mortgagee. Whereabouts of Sohan Lal were not known and he seems to have died.

11. Thus, keeping in view the above said facts, execution petition (Annexure P-3) filed by the petitioner was dismissed by the learned Civil Judge, Junior Division, Gurugram vide judgment dated 22.03.2017 (Annexure P-5). The said judgment was challenged by the petitioner vide appeal dated 03.05.2017 (Annexure P-6). The said appeal of the petitioner was dismissed in default vide order dated 20.10.2022 (Annexure P-7). The petitioner filed an application dated 12.12.2022 (Annexure P-8), for restoration of the appeal which is stated to be pending. Reply dated 02.11.2023 (Annexure P-9) was filed by respondent No.5 to the said application for restoration of the appeal. It is this proceeding pending for



restoration of appeal that the respondent No.5 filed an application dated 22.02.2024 (Annexure P-11) seeking dispensation of service of deceased respondent No.1 Sohan Lal. In the said application, reply was filed by the petitioner on 12.07.2024 (Annexure P-13). However, the said application of respondent No.5 has been allowed vide impugned order dated 12.07.2024 (Annexure P-13).

12. It may also be pointed out that in the meantime, LRs of respondent No.1 Sohan Lal had filed an application before the Executing Court for getting themselves impleaded as party-respondents in the execution petition. The said application of LRs of Sohan Lal was dismissed by the learned Additional Sessions Judge, Gurugram vide order dated 26.07.2019 (Annexure P-10) noting therein that Sohan Lal had expired on 16.12.1963.

13. From the above facts, it is clear that the suit filed by the plaintiff/petitioner was void ab-initio as it is not denied that Sohan Lal had expired on 16.12.1963 and the civil suit was filed on 14.09.2005 against the dead person. It was for this reason that the execution petition of the petitioner was dismissed. It has further come on record in the pleadings of respondent No.5 that the petitioner and his brother Yogender Aggarwal are chronic litigants and more than 10 cases have been filed by them which are pending. In any event, it is incongruous and incomprehensible to this Court, as to how the petitioner is aggrieved, if service against a dead person is dispensed with. Especially in view of the admitted fact that, applications filed by the petitioner as also by LRs of deceased Sohan Lal for their



impleadment already stand dismissed vide order dated 26.07.2019 (Annexure P-10).

14. In view of the above facts, I find no error whatsoever in the impugned order dated 12.07.2024 (Annexure P-13). The present petition is nothing but a gross misuse and abuse of the due process of law. The same is accordingly **dismissed**.

15. Pending application, if any, stands disposed of.

29.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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