



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 5 of 2018 (O&M)

Date of Decision: 17.03.2025

Vikas Wadhawa and Others

... Appellant(s)

Versus

Himachal Pradesh State Industrial Development Corporation Limited and
Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ajay Jain, Advocate
for the appellant(s).

Ms. Ekta Thakur and Ms. Shilpa, Advocates
for the respondents.

Anil Kshetarpal, J.

1. The only argument of the learned counsel representing the appellants is that the Appellate Court could not remit the matter back to the Executing Court for fresh decision after culling out the issues and directing the parties to lead evidence. He relies upon Order XLI Rule 25 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

2. This Court has considered the submissions of the learned counsel representing the appellants and finds no merit therein.

3. The Executing Court had ordered removal of the attachment of the property without giving any opportunity to the parties to prove their case. It is against the aforesaid order, the first appeal was filed before the Appellate Court which was not governed by Order XLI of the CPC. The

Appellate Court has recorded the following observations while remitting the matter back to the Executing Court:-

“7. After having heard Id. Counsel for the parties and after having gone through the case file, this court finds that present appeal deserves to be allowed because the objections filed by the objectors in the present execution petition are of such nature that it cannot be adjudicated upon properly without directing the parties to adduce their evidence. According to the version put forth by the objectors the house in question was originally allotted to one Sh. Govind Ram, who had sold the same to Smt. Ujjagar Kaur, wife of Sh. Kishan Singh Kohli vide conveyance deed dt. 25.11.2007. After the death of Smt. Ujjagar Kaur, the property was inherited by her natural legal heirs i.e. husband, four sons and four daughters namely (I) Kishan Singh (ii) Bhagwant Singh (iii) Swaran Singh Kohli (iv) Harinder Singh (H.S.Kohli) (v) Narinder Singh (vi) Surinder Kaur (vii) Sohinder Kaur (viii) Kanwaljit Kaur and (ix) Lakhwinder Kaur. A relinquishment deed dated 13.9.1963 was created vide which all the legal heirs of Smt. Ujjagar Kaur had relinquished their ownership rights in favour of their father Sh. Kishan Singh Kohli. Thereafter, an unregistered WILL dt. 2.6.1979 was created vide which the said property had been bequeathed by Sh.Kishan Singh Kohli in favour of his two sons Bhagwant Singh Kohli and Narinder Singh Kohli and three daughters (1) Sohinder Kaur (ii) Kamaljit Kaur and Lakhwinder Kaur

excluding his two sons and one daughter. Sh.Harinder Singh Kohli was excluded from inheriting the property left by Sh.Kishan Singh Kohli. Sh. Bhagwant Singh Kohli, Sohinder Kaur, Kanwaljit Kaur and Lakhwinder Kaur sold their respective 20% share each in favour of their real brother Narinder Pal Singh and his wife namely Darshan Kaur and ultimately the said share was transferred in their name on 10.06.2004. Thereafter on 30.7.2010, respondents no.4 & 5 Sh.Vikas Wadhawa and Ms.Nisha Wadhawa had purchased 20% share of the house in question from Narinder Pal Singh and Hardarsh Kaur for a sale consideration of Rs.34 lacs. Same was transferred in their favour on 16.8.2010. Similarly 40% share of the house was purchased by Smt. Rita Wadhawa from Sh. Narinder Pal Singh and Hardarsh Kaur vide sale deed dt. 21.6.2010 for a sale consideration of Rs.68 lacs and same was transferred in their name on 22.07.2010. Subsequently remaining 40% share of the house was purchased by Surinder Kumar Wadhawa from Narinder Pal vide sale deed dt. 2.7.2010 for sale consideration of Rs.68 lacs and was transferred in his favour on 3.8.2010. Sh.Narinder Pal Kohli had mortgaged the said house with HDFC bank and had taken a loan of Rs.10 lacs but no step was initiated against Sh.Harinder Singh Kohli to satisfy the decree. According to the version put forth by the objectors, children of Sh.Kishan Singh Kohli who were beneficiary of the WILL dt. 2.6.1979 were in possession over

the house being its owners and JD no.3 was having no concern with the said house at any point of time. As such, this house cannot be attached and sold to satisfy the decree. Objections filed by the Objectors were so complex that it could not have been decided without obtaining evidence of both the parties, because intrinsic question involved in the present case was that as to whether WILL had been executed by excluding JD No.3 Sh.Harinder Singh Kohli bonafidely or it was a device to save the property from attachment and auction and it can also be verified only from the evidence as to whether the subsequent sale of the said house to the present objectors was a bonafide act or it had also been done only with malafide intention to frustrate the decree and since this court is fully convinced that these objections should have been probed thoroughly, hence the impugned order dt. 15.6.2012 stands set aside and the execution petition is remanded back to the executing court with directions to decide the same afresh after obtaining evidence of both the parties after framing the issues. The parties are directed to appear before ld. Executing Court on 8.1.2017.”

4. The learned counsel representing the appellants submits that the judgment debtor is settled in Canada and he has no interest in the suit property.

5. The Executing Court is required to inquire into the matter because the decree in recovery of public money was passed in favour of the Himachal Pradesh State Industrial Development Corporation Limited in the

year 1996. The Executing Court had initially attached the property which was subsequently removed. Hence, the First Appellate Court has correctly directed the Executing Court to decide the objections after permitting the parties to lead their respective evidence.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present appeal is dismissed. The parties, through their respective counsel, are directed to appear before the Executing Court on 09.04.2025.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 17, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No