

(1998) 09 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 2683 of 1997

Puran Chand Halwai

APPELLANT

Vs

Krishan Kumar and Another

RESPONDENT

Date of Decision: Sept. 2, 1998**Citation:** (1999) 121 PLR 262**Hon'ble Judges:** N.K. Aggarwal, J**Bench:** Single Bench**Advocate:** S.C. Kapoor and Ashish Kapoor, for the Appellant; Hemant Sarin, for the Respondent**Final Decision:** Dismissed

Judgement

N.K. Aggarwal, J.

This is a revision petition by the tenant. He has challenged the order passed by the executing court, dismissing his objections filed u/s 47, Code of Civil Procedure, in the execution proceedings.

2. A petition, seeking eviction of the tenant from a shop, was filed by the landlord u/s 13, the Haryana Urban (Control of Rent and Eviction) Act, 1973 in the Court of Rent Controller, Bhiwani. The rent petition was dismissed on August 18, 1987. Appeal filed by the landlord was, however, allowed by the appellate authority. The revision petition filed by the tenant, Puran Chand, in the High Court came to be dismissed on November 16, 1993. The landlords, who were the minor sons of Ramesh Chander, filed execution petition through their mother Smt. Savitri Devi, seeking eviction of the tenant from the shop. The tenant, Puran Chand, filed an objection petition before the executing court raising a plea that the landlord had no right to seek eviction in pursuance of the eviction order because the landlord had agreed on March 19, 1993 to sell the shop in question for a sale consideration of Rs. 40,000/-. It was stated by him that an agreement, in writing, had been executed by the landlord in his favour, though the agreement was not signed by Puran Chand but by his son, Prem Parkash, who lived jointly with him. It was an agreement

between the landlord and the tenant and, therefore, the proposed vendee cannot be ejected from the shop in view of the agreement. It was also pleaded by the tenant-judgment debtor that the eviction order was not executable as Ramesh Chander, the father and guardian of the minors had agreed to sell the shop and, therefore, the tenant's possession, in the status of a proposed vendee, stood protected under the said agreement. Minors have not challenged the agreement nor have they declared it as a voidable agreement.

3. The landlord took the plea that the said agreement had been entered into by the father of the minors, who had no right to enter into such an agreement against the interest of the minors. It was alleged that the father of the minors was a person of bad habits and he was acting against the interest of the minors. Therefore, the agreement was not binding on the minors inasmuch as it was against their interest.

4. The execution court dismissed the objection petition.

5. Learned counsel for the tenant-judgment debtor has argued that the objection petition filed by the judgment debtor has been dismissed by the execution court without framing issues and without recording evidence. It is further pointed out that since the agreement to sell was executed by the father of the minors and a sum of Rs. 10,000/- was paid as part consideration to him, the agreement was valid and the possession of the tenant became thereafter, the possession of the vendee.

6. Learned counsel for the petitioner-tenant has placed reliance on a decision of this Court in Waryam Singh v. Sham Dass 1984(2) R.L.R. 567 in support of his plea that an ejectment decree was not executable if there was a fresh tenancy between the landlord and the tenant on the basis of the compromise. The learned counsel has argued that, in the case in hand also, there is an agreement to sell between the parties and, therefore, the ejectment decree became ineffective on account of the said agreement. He has also placed reliance on another decision of this Court in Woolways Shop v. Central Bank of India and Ors. 1989 (95) P.L.R. 559 to buttress his argument that executing Court is under an obligation to decide the dispute in a judicial manner. If the parties wanted to lead evidence, the court ought to have allowed opportunity.

7. Learned counsel for the landlord-respondent has, on the other hand, argued that the tenant-objector did not lead any evidence nor sought permission from the court to produce any evidence except the filing of the agreement dated March 19, 1993. Nothing prevented the objector from producing evidence in support of his plea. He has further argued that the agreement had been executed by Ramesh Chander, father of the minors, with Prem Parkash and not with the judgment debtor. Prem Parkash was a major son of the judgment debtor but that would not change the nature of the agreement or the status of Prem Parkash as a proposed vendee. Moreover, Ramesh Chander, father and guardian of the minors, filed an application u/s 8, Hindu Minority and Guardianship Act, 1956, seeking permission from the

Court to alienate the property of the minors. Property of the minors could not be alienated without permission from a competent court. That petition was, however, dismissed by the Court on June 8, 1996. Since permission to sell the premises was not granted by the Court, the agreement lost its significance and became ineffective. Not only that, the minors, through their mother, filed the execution petition seeking eviction of the tenant because the agreement had been entered into by their father against their interest. Objection petition was not filed by the proposed vendee. Prem Parkash, but by the judgment debtor who has no right under the agreement to sell. Therefore, the objection petition did not lie at all. Learned counsel for the landlord has further argued that the tenant, in his revision petition before the High Court, never disclosed that any agreement in respect of the shop in question had been entered into on March 19, 1993, though the said revision petition was disposed of by the High Court thereafter on November 16, 1993. In that view of the matter, the tenant-judgment debtor had no right to seek protection under the said agreement which was neither in his favour nor was it brought to the notice of the High Court where the revision petition had been filed by him.

8. Learned counsel for the landlord-decree holder has placed reliance on a decision of the Madhya Pradesh High Court in [Mukesh Vs. Deonarayan and Others](#), wherein it was held that if the relation between the minors and his father was not cordial, the suit, filed by the mother as the guardian of the minor for the benefit of the minor, was maintainable. The learned counsel has argued that, in the case in hand also, execution petition was filed by the mother of the minors because the father of the minors had wrongly entered into an agreement to sell their property without seeking prior permission from the competent court. The learned counsel has also relied upon a decision of this Court in [Parkash Chand Vs. Harbans Singh](#), in support of his plea that Order 32 Rule 7, CPC applied to execution proceedings. In that case, it was held that a compromise or adjustment of a decree by the next friend of a minor required the sanction of the Court. Where the father obtained a decree as the next friend of his minor son and adjusted the decretal amount with the judgment debtor in execution proceedings without sanction of the court, the adjustment was not binding on the son, who subsequently attained majority and took out the execution. Learned counsel has, following the ratio of the said decision argued that the minors, being the decree holders, had rightly ignored the agreement entered into by their father with a stranger and sought eviction of the tenant in pursuance of the decree in their favour. The agreement to sell entered into by their father was not only against their interest but was also invalid for want of permission from the competent court.

9. Reliance is also placed by the learned counsel for the decree holder- landlord on [Nedunuri Kameswaramma Vs. Sampati Subba Rao](#), . It was held that where the parties went to trial fully knowing the rival case and led all the evidence, not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case and that there was mis-trial

which vitiates the proceedings. The learned counsel has argued that the executing court decided the objection raised by the judgment debtor in the light of his plea, based on an agreement dated March 19, 1993 and there was no requirement to frame issues in view of the short plea raised by the objector. Learned counsel has further placed reliance on another decision of the Supreme Court in [Kunju Kesavan Vs. M.M. Philip I.C.S. and Others,](#) . It was held therein that where both the parties understood what the issue in the case was, absence of issue did not lead to mistrial sufficient to vitiate the decision.

10. On a consideration of the controversy between the parties, it is found that the objection raised by the tenant-judgment debtor was not sustainable as it was based solely on the ground to sell the property in question in favour of his son. The objection petition filed by him was rightly dismissed because he was not the proposed vendee under the agreement and, therefore, his possession cannot be treated to have become from tenant's possession to vendee's possession. Therefore, he was not proposed vendee. Moreover, application filed by the father of the minors under the Hindu Minorities and Guardianship Act was dismissed by the competent court and in that view of the matter, the agreement came under a cloud. The judgment debtor could not seek any help from the said agreement. The judgment debtor never argued before this Court, in his revision petition, that any agreement to sell existed between him and the landlord, though the agreement had already been entered on March 19, 1993 and the revision petition came to be disposed of by this Court on November 16, 1993. The judgment debtor has, therefore, by his own conduct, deprived himself of any benefit arising from the said agreement.

11. In the result, the revision petition is found to be without merit and it is, therefore, dismissed.

12. No order as to costs.