

Dewan Chand Vs District and Sessions Judge and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 24, 1995

Acts Referred: Constitution of India, 1950 " Article 227

Citation: (1995) 111 PLR 65

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: R.K. Gupta, M.S. Sindhu and Paramjit S. Batra, for the Appellant; Ashok Sharma and Baljinder Singh for Respondent No. 3 and J.R. Mittal and K.K. Garg, for the Respondent

Judgement

V.K. Jhanji, J.

In this revision petition, although prayers made are for issuance of direction to the Subordinate Courts to dispose of the suit

and also the appeal expeditiously and for transfer of the suit from the Court of Sub Judge II Class, Malerkotla to some other court of competent

jurisdiction, but having gone through the averments made in the petition and also the annexures attached to the petition I am of the view that not

only a direction is required to be given to dismiss the suit being frivolous but the plaintiff too has to be burdened with exemplary costs. In order to

appreciate the course adopted by this Court, it becomes necessary to notice few facts.

2. In a dispute between the petitioner and one Gowara Co-operative Society, the Arbitrator gave an award for recovery of Rs. 6294.29P. A

decree in terms of that award was passed. In execution of the decree, land measuring 103 Bighas 8 Biswas situated in village Gowara, Tehsil

Malerkotla, District Sangrur was auctioned and one Arjan Singh who gave a bid of Rs. 11,500/- was declared to be highest bidder. Sale in his

favour was confirmed. Petitioner having felt aggrieved against the order confirming the sale filed an appeal before the first appellate Court who vide

its order dated 10.2.1970 dismissed the appeal Education Second Appeal (ESA) No. 506 of 1970 came to be filed by the petitioner in March,

1970. Auction purchaser, Arjan Singh died during the pendency of second appeal and two persons namely Sarjan Singh and Mr. Ralli were

brought on record as legal representatives of Arjan Singh. During the pendency of the second appeal, a compromise was arrived at between the

petitioner and the legal representatives of Arjan Singh and as a result of that compromise E.S.A. No. 506 of 1970 was accepted vide order dated

4.5.1971 and the sale certificate issued by the executing court was cancelled, meaning thereby that the petitioner who had been dispossessed as a

result of auction became entitled to possession of land. On 22.10.1971, Shyam Kaur (respondent No. 4 herein) filed Miscellaneous Application

for recalling order dated 4.5.1971 passed in the Execution Second Appeal, claiming herself to be legatee on the basis of a Will allegedly executed

by Arjan Singh in her favour. Application filed by her was dismissed on 30.11.1971 with the observation that no ground of review is made out.

Shyam Kaur, thereafter filed civil suit No. 81/1972 in the court of Sub Judge 1st Class, Malerkotla for declaration to the effect that she is owner of

the suit land, and also for injunction restraining the petitioner from interfering in her peaceful possession and from getting the revenue record

corrected in his name. On the basis of pleadings of the parties, following issues were framed by the trial Court.

1. Whether Arjan Singh deceased executed a valid will in favour of the plaintiff, if so its effect? OPP.
2. Whether the plaintiff is entitled to the injunction prayed for? OPP.
3. Whether the High Court judgment and order dated 4.5.1971 and compromise dated 3.5.1971 entered into between defendant Dewan Chand and Gowara Co-operative Agricultural Service Society Ltd., Gowara. Sarjan Singh, Smt. Bant Kaur and Sant Kaur the alleged L.Rs. of deceased Arjan Singh are void and ineffective qua the rights of the plaintiff? OPP.
4. Whether the suit is not maintainable in the present form? OPP.
5. Whether the suit is bad for non-joinder of parties? OPD.
6. Whether the plaintiff is estopped from filing the present suit by her act and conduct? OPD.
7. Whether the suit is time barred? OPD.
8. Relief.

The suit filed by Shyam Kaur was decreed on 17.9.1973 by the Court of Sub Judge 1st Class, Malerkotla. Petitioner having felt aggrieved against

the said judgment, filed an appeal before the District Judge, Sangrur who vide his order dated 13.2.1978 accepted the appeal and set aside the

judgment and decree passed by Subordinate Judge and as a consequence of which the suit filed by Shyam Kaur was dismissed. Shyam Kaur

appealed to this Court by way of Regular Second Appeal No. 828 of 1987, but the same was dismissed by this Court on 28.5.1987. This Court

while dismissing the appeal observed as under:-

The main question to be decided in this appeal is as to whether Shyam Kaur plaintiff on the basis of will in her favour executed by Arjan Singh is

entitled to the declaration that the order passed by the High Court was a nullity. Of course there was an issue that the said orders are void and

ineffective qua the rights of the plaintiff, but there was no issue that Surjan Singh and Mst. Ralli were impleaded as legal representatives of Arjan

Singh deceased by fraud or misrepresentation. In the absence of any such specific plea and any finding by the Courts below, the order of the High

Court passed on compromise could not be held to be a nullity as such. Moreover, Shyam Kaur, plaintiff did move an application for review of the

High Court order, but the same was dismissed as observed earlier. In these circumstances, the only remedy open to the plaintiff was to claim

benefits which the said legal representatives obtained in the High Court by way of compromise. For that purpose she never filed the suit and not

only that even the said legal representatives were not impleaded as parties to the suit. As a matter of fact the dispute now was between Shyam

Kaur plaintiff and the said alleged legal representatives. Dewan Chand defendant was no more in picture after the matter was compromised in the

High Court and the auction was set aside. That being the situation, it has been rightly observed by the lower appellate Court that the plaintiff could

assail the judgment and decree on the basis of fraud or misrepresentation but when that judgment is not challenged, it will be binding on her and she

will be entitled only to the benefits that were derived by the persons who were impleaded as legal representatives of the deceased. In this view of

the matter, the appeal fails and is dismissed with no order as to costs.

Shyam Kaur, thereafter, filed SLP No. 9836 of 1987 in the Supreme Court, but the same too was dismissed on 13.3.1990. In order to seek

restoration of possession, petitioner approached the executing Court, but Shyam Kaur in order to retain possession got objections filed through

Balbir Singh and others who objected to the warrants of possession on the ground that they are in possession for the last 12 years and have

become owners by adverse possession and the order which was passed in favour of the petitioner is not binding on them being not parties to the

decision. Simultaneously, Balbir Singh and others also filed Civil Suit No. 1775/90. In the civil suit, an application for ad interim injunction was filed

on which ex-parte interim stay was given. Against the order granting ex-parte interim stay, petitioner filed an appeal before the Additional District

Judge, Sangrur, who accepted the same and in consequence thereof, the application filed by Balbir Singh and others stood dismissed. Civil

Revision No. 1043 of 1991 titled as Balbir Singh and Ors. v. Dewan Chand was dismissed by this Court on 6.5.1991. This Court observed :

In fact the reading of judgment dated 17.9.1973, rendered by Mr. J.K. Goel, Sub Judge 1st Class, Malerkotla, in a suit titled ""Sham Kaur v.

Dewan Chand"" goes to show that some relations of Sham Kaur were in possession of the suit land. It appears that after Sham Kaur lost the

litigation, she put up the plaintiffs of the present case with a view that the respondent is unable to take possession. One of the plaintiffs of the

present case appeared as a witness in the case and he suppressed all the facts with regard to earlier litigation. The first appellate Court came to the

correct conclusion that in the totality of the circumstances of present case, the plaintiffs do not deserves any concession. The submission of learned

counsel for the petitioners that even if the plaintiffs are trespassers, they cannot be ejected except otherwise than in due course of law cannot be

accepted for the reason that the plaintiffs who were claiming in the present suit to be in adverse possession were found to be in possession on

behalf of Sham Kaur. The aforesaid finding was recorded on the basis of statement given by one of the plaintiffs himself in the said litigation. If at

all, now possession of plaintiffs is disturbed, it would be in fact, dispossession of the person on behalf of whom they were in possession.

Objections filed by Balbir, Singh and others also came to be dismissed by the Court of Additional District Judge, Sangrur and the appeal filed

against the said order too met the same fate. Shyam Kaur started another round of litigation by filing Civil Suit No. 412 on 13.5.1991 on the same

plea which had already been agitated upon and finally decided upto the Apex Court. Her intention obviously was to remain in illegal possession of

the suit land and to deprive the petitioner of his lawful rights. Along with the suit, Shyam Kaur filed an application for ad-interim injunction. The

application without any order remained pending for about 2-1/2 years. During the pendency of this application, Shyam Kaur in execution

proceedings filed objections for recalling the warrants of possession and for staying delivery of possession to the petitioner. Objections filed by

Shyam Kaur were dismissed by the executing Court on 7.12.1993 and the appeal filed against this order also came to be dismissed by Additional

District Judge, Sangrur, who opined that Shyam Kaur has lost the case upto Supreme Court and as such has no right to put obstruction in delivery

of possession to the decree-holder. She, thereafter, pressed her application for ad-interim injunction pending in the suit and on 8.12.1993 Sh.

Sukhdarshan Singh, Sub-Judge, II Class, Malerkotla granted ad-intefim injunction in her favour. Petitioner was shocked to find that the Court

while granting the interim relief in favour of Shyam Kaur though has noticed the decisions of this Court as well as dismissal of SLP by the Apex

Court, but still granted injunction. This led to the filing of an appeal which is now pending in the court of Additional District Judge, Sangrur.

Apprehending that justice may not be done to him, petitioner has filed this petition for transfer of suit pending in the Court of Sh. Sukhdarshan

Singh, Sub-Judge II Class, Malerkotla, to some other Court of Competent jurisdiction at Malerkotla, and also for a suitable direction to the

additional District Judge, Sangrur to decide the appeal forthwith.

3. Having gone through the order passed by Sh. Sukhdarshan Singh, Sub Judge II Class, Malerkotla, I am of the view that the order is perverse

and in case it is not interfered with, a great injustice would be done to the petitioner. The Subordinate Judge has conveniently ignored the decisions

of this Court between the parties to this litigation by saying:

Now the present suit has since been filed by the plaintiff-applicant by removing all the technical defects and legal infirmities and as such, it cannot

be said that the suit of the plaintiff is barred by the principles of res-judicata.

and further by observing:

It means that defendants-respondent No. 3 and 4 (since deceased) had not compromised the matter with defendant-respondent No. 1 in the

Hon"ble High Court during the course of the pendency of ESA No. 506 of 1970 and the plaintiff-applicant has challenged not only the

compromise-deed to which they neither authorised Sh. Tehal Singh Mangat, Adv. nor they themselves entered into any compromise with

defendant-respondent No. 1, as is apparent on the face of it. So, it being a matter of evidence as to whether a legal and effective Compromise was

effected between the competent persons (alleged L.Rs. of Arjan Singh since deceased through their counsel Sh. Tehal Singh Mangat, Advocate)

on the basis of which the judgment and order was passed.

It is really amazing that despite the decisions of this Court in Execution Second Appeal, Regular Second Appeal and Civil Revision, the

Subordinate Judge has passed an order of injunction forgetting that judicial proceedings are not to be used to protect or perpetuate a wrong

committed by the persons who approaches the Court. The order runs clearly in derogation to the decisions of this court rendered between the

parties to the present litigation. The illegality is writ-large on the face of record and the facts do not have to be proved in order to demonstrate it. In

such circumstances, it is but the duty of the High Court to exercise its power of superintendence under Article 227 of the Constitution of India,

notwithstanding that the party" has availed the alternative remedy of appeal which is pending decision. Rule of alternative remedy does not oust the

jurisdiction of the High Court to interfere in special circumstances or in extra-ordinary cases where the order on the face of it is perverse and the

aggrieved person has no speedier remedy except approaching this Court under Article 227 of the Constitution.

4. The present suit was filed by respondent No. 4 after she lost in all Courts, fully knowing well that after the sale has been set aside she has no

right to remain in possession of the suit land. A strong prima facie case was required to be made of injunction. However, the Subordinate Court

instead of giving effect to the decisions of this Court or protecting a citizen who has wronged or deprived of a property, has allowed its forum to be

used by a person who committed wrong. It is pertinent to mention that the application for injunction remained pending for about 2-1/2 years but

the order came to be passed only when Sh. Sukhdarshan Singh, Sub Judge II Class Malerkotla took over charge on his transfer.

5. Learned counsel appearing for respondent No. 4 has been fair in saying that the order passed by the Subordinate Judge in no way can be

supported.

6. Resultantly, the Subordinate Judge, Malerkotla, with whom the suit is pending, is directed to dismiss the suit forthwith as no useful purpose

would be served if the petitioner is allowed to go through an onerous and protracted trial for no rhyme and reason. In consequence of the dismissal

of the suit, appeal filed by the petitioner shall stand accepted and application under Order 39 Rules 1 and 2, Code of Civil Procedure, filed by

Shyam Kaur shall stand dismissed. The executing Court shall issue warrants of possession for restoring possession to the petitioner who has been

kept out of possession for almost 25 years. The executing court after getting the possession delivered shall determine the mesne profits within three

months and on determination of the amount, warrants for recovery of mesne profits shall be issued against respondent No. 4 (Shyam Kaur) and

also against respondents No. 5 to 11, who have remained in possession at the instance of respondent No. 4. Respondent No. 4 who is plaintiff ill

the suit, is also burdened with costs which are quantified at Rs. 10,000/-.

7. This petition shall stand disposed of in the terms indicated above.