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**(2010) 11 P&H CK 0382**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 1687 of 1994

Chanan Singh

APPELLANT

Vs

Nazar Singh and Another

RESPONDENT

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**Date of Decision:** Nov. 17, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 73

**Hon'ble Judges:** Hemant Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Hemant Gupta, J.

Challenge in the present petition is to the order passed by the learned Executing Court on 9.3.1990, whereby an objection filed by the Petitioner against the sale conducted on 15.3.1986 was dismissed and the order in appeal passed by the learned first Appellate Court, on 7.1.1994, affirming the order passed by the learned Executing Court.

2. Nazar Singh obtained a money decree in the sum of Rs. 25,197/- against Jagjit Singh. Another money decree in the sum of Rs. 54,807.75p was obtained by Ajit Singh son of Naranjan Singh against said Jagjit Singh. In execution of the decrees in favour of Nazar Singh and Ajit Singh, land of Jagjit Singh, Judgment Debtor, measuring 23 kanals 11 marlas was put to sale by way of auction. The same was purchased by Chatar Singh and Nazar Singh - Decree Holder, for Rs. 85,000/-.

3. The present Petitioner filed objections against the sale alleging, irregularities, illegalities and fraud in the conduct of the auction. It is the case of the Petitioner that there was a money decree in his favour in the sum of Rs. 54,807.75p against Jagjit Singh and therefore, the sale of the land of the judgment Debtor, suffers from illegalities and irregularities and that in terms of Section 73 of the CPC, the Petitioner is entitled to ratable distribution of the assets recovered from Jagjit Singh,

Judgment Debtor.

4. The learned Executing Court found that the auction conducted on 15.3.1986 does not suffer from any illegality or irregularity, in as much as the auction has been conducted after effecting proper Munadi, including that on the spot. The offer of the Petitioner to pay a sum of Rs. 1,25,000/-at the time of hearing of the objections was found to be not tenable as it was found that there has been considerable rise in the price of the agricultural land within a span of last four years.

5. In appeal, the learned first Appellate Court found that there is no document on record to prove that any decree is in favour of the Petitioner and as to when he filed the execution of the said money decree and in which Court, it was pending. Consequently, the appeal filed by the Petitioner was dismissed.

6. When the revision petition came up for hearing before this Court on 8.11.2010, learned Counsel for the Respondent has argued that the Petitioner has not produced any document to show that there is decree, the basis to claim ratable distribution of the sale proceeds or that the Petitioner filed any execution in respect of the property sold in favour of the Respondent in an open auction. Since none was present on behalf of the Petitioner, hearing of the petition was deferred to 10.11.2010. None appeared on behalf of the Petitioner on 10.11.2010 and even today, none is present on behalf of the Petitioner.

7. Since the Petitioner has not produced any document to show that any decree was granted in his favour or that the Petitioner has filed any execution, the Petitioner cannot claim ratable distribution out of the sale proceeds in favour of the Respondent in pursuance of the auction conducted on 15.3.1986. Provisions of Section 73 CPC would only be attracted if any application for execution of the decree against the same judgment Debtor is pending. In the absence of any such execution filed by the Petitioner, the reasoning given by the Courts below cannot be said to be suffering from any patent illegality or irregularity, which may warrant interference by this Court in exercise of its revisional jurisdiction.

8. Hence, the present petition is dismissed.