Guddie Madanjit Achreja Vs Union of India and others

Civil Writ Petition No. 11199 of 2004 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 31, 2006

Acts Referred:
Transfer of Property Act, 1882 â€" Section 44

Citation: (2006) 3 RCR(Criminal) 808

Hon'ble Judges: Baldev Singh, J; Amar Dutt, J

Bench: Division Bench

Advocate: R.S. Mittal, with Mr. Atul Gaur, for the Appellant; Rajan Gupta for the C.B.I. For the Respondent No. 3 O.P. Goyal with Ms. Mamta Bhatti, for the Respondent

Judgement

Amar Dutt, J.
Guddie Madanjit Achreja has filed the present writ petition seeking quashing of the order dated 21.5.2004, Annexure P-3,

by which possession of the sealed portion of House No. 311, Sector 9-D, Chandigarh has been ordered to be handed over to M.S. Walia-

respondent No. 3 by the Special Court, C.B.I., Chandigarh.

2. According to the petitioner, late Sh. Hukam Singh, grand father of the petitioner''s first husband late Sh. B.S. Achreja had purchased a plot in

the name of his son Sh. Harkishan Singh for a sum of Rs. 7038.56 paise, which was adjusted towards the claim of Sh. Hukam Singh for various

properties which belonged to him in Pakistan and as such the plot became a coparcenary property and after the death of Sh. Hukam Singh

devolved upon Sh. Harkishan Singh Achreja and his two sons, namely, late Sh. B.S. Achreja and Sh. N.S. Achreja. Sh. Harkishan Singh died on

12.9.1977 and as the property became HUF property, and was shown as such in the Income Tax Returns and the Estate Duty Returns that were

filed by Smt. Inderjit Achreja as the Manager. Petitioner started residing in the said property in the year 1979 after her marriage with Capt. B.S.

Achreja, which was dissolved through a decree of mutual consent. The share of her husband came to the lot of the petitioner and her son Inder

Vikram Singh on the basis of mutual agreement of relinquishment of the right executed between the petitioner and her former husband. Petitioner

further stated that taking advantage of the disputes in the family and being well aware of the fact that no partition had taken place, papers were got

prepared in relation to the property for transfer of the undivided share of Sh. N.S. Achreja in the name of Dr. Harinder Pal Singh. This transaction

according to the petitioner was void as it did not have the consent of all the co-sharers.

3. In the year 1998, when a case was registered by the C.B.I. against Sh. M.S. Walia, a Judicial Officer for corruption and amassing assets

beyond known sources of his income. The respondent was in occupation a portion of the property. This portion was sealed by the Investigating

Agency. The petitioner further contended that although House No. 311, Sector 9-D, Chandigarh is one residential house and no partition of the

property had taken place yet Sh. M.S. Walia being aware of his position and clout had allegedly purchased a portion of the property in the name

of his Uncle Dr. Harinder Pal Singh, who is a resident of United States of America. After registration of the case and transfer of the Investigation to

the C.B.I. this property is in possession of the C.B.I. to which the investigation of the case against said Sh. M.S. Walia was transferred.

4. On 26.7.2004 at about 4.30 P.M., respondent No. 3 along with an officer of the C.B.I. visited the house of the petitioner and asserted that Sh.

R.S. Baswana, Special Judge, C.B.I. Court, Chandigarh had passed an order directing the handing over the portion of House No. 311, Sector 9-

D, Chandigarh to Sh. M.S. Walia. As the petitioner had a genuine grievance against handing over the property, she brought it to the notice of the

officer, who had come for the purpose of handing over possession that if the property is handed over to an alien, she would not be able to live

peacefully. She also apprised him of the apprehension that her life and limb would be at risk because Sh. M.S. Walia holds her responsible for

disclosing his misdeeds to the authorities concerned which disclosures have led to his dismissal from service. She has also averred in the petition

that her petition for partition of the property has been declined on the ground that petitioner being wife could not claim partition of the joint

property. This order had been appealed against. In view of these circumstances, petitioner asserted that a 3rd person cannot be put into

possession of an undivided share in the joint family property. She has further asserted that the suit for partition and permanent injunction filed by the

sister-in-law of the petitioner Mrs. Neena Sahi is still pending. She has further averred that respondents No. 3 to 5 had moved an application

before the Special Judge, C.B.I. Court, Chandigarh without apparently disclosing the pendency of civil litigation between the parties in which the

relief of possession by way of interim measure has been declined to respondent No. 5 - Dr. Harinder Pal Singh. In these circumstances, it was

averred that the order of the Special Judge, C.B.I. Court, Chandigarh ordering handing over the property to Sh. M.S. Walia was arbitrary and

without jurisdiction on the ground that :-

a) No order could be passed in favour of Sh. M.S. Walia because he does not claim to be either owner or in possession of the property in dispute;

and

b) Order has been obtained by respondents No. 3 to 5 in collusion with one and others and seeks to circumvent the order by which the similar

relief had been refused to respondent No. 5.

In view of this, it is prayed that a writ in the nature of Certiorari be issued quashing Annexure P/1 by which learned Special Judge, C.B.I. Court,

Chandigarh had ordered handing over the possession of the portion of the property sealed by the C.B.I. to Sh. M.S. Walia and such other

consequential reliefs as the Court may deem fit.

5. In the written statement filed by Sh. M.S. Walia, preliminary objections were taken regarding the maintainability of the writ petition as there was

an equally efficacious remedy available under the CPC against the impugned order. It was also averred that as the C.B.I. is the only party which

would be affected by the order is not aggrieved by it, the petitioner has no locus standi to file the present petition. It was further submitted that the

petitioner has come to the Court with unclean hands and her case is based on the property being HUF. Her son Inder Vikram Achreja had filed

Civil Suit No. 19 of 1994 which was decided on 16.9.2003 in which he had claimed the property to be HUF. In that suit, a specific issue was

framed that :-

Whether the suit property is HUF as alleged in the plaint ? OPP

and was answered in the following manner :-

The finding on issue No. 1 is that ""the suit property cannot be said to ancestral HUF property, rather the same was separate self acquired property

of the grand father of the plaintiff. Present issue is decided against the plaintiff.

6. It was also submitted that another important fact which had been withheld by the petitioner is that her son Inder Vikram Achreja had filed a suit

u/s 44 of the Transfer of Property Act through the petitioner as his power of attorney and no mention of this litigation is forthcoming in the present

petition. It was also asserted that there is a material concealment of the fact that the petitioner had filed an application for execution for the

pensionary and other benefits of late Capt. B.S. Achreja to be granted to her on the basis of terms and conditions of the mutual agreement and

there was a firm finding of the Executing Court that no decree was granted by the Court on the basis of terms and conditions enumerated in the

mutual agreement. It was further asserted that the petitioner had withheld the fact that after divorce from her, Capt. B.S. Achreja, married with

Cynthia Rai Achreja and that lady is the only legal heir and wife of late Capt. B.S. Achreja. In this view of the matter, it was submitted that the

petitioner is a rank tress-passer to the property in question. It was also submitted that in view of the facts averred, the petitioner a question of civil

nature, her share and partition etc. The dispute could only be decided in a civil suit and cannot be determined in the writ jurisdiction. It was further

submitted that the Chandigarh Police had illegally sealed the premises by putting a lock and seal on the entrance portion of the house on

12.2.1998. After this, the petitioner had got put her lock on the inside of the entry gate. Though she has no claim to the entry gate and the C.B.I.

cannot in these circumstances comply with the order dated 21.5.2004. As such the petitioner being a law breaker is not entitled to any

discretionary relief.

7. In a separate reply filed on behalf of respondent No. 2-Central Bureau of Investigation, the averments regarding the status of respondent No. 3-

Sh. M.S. Walia and direction to the C.B.I. to take over the investigation of FIR No. 10 dated 3.2.1998 were reiterated. It was also mentioned

that investigation conducted by the C.B.I. had established that respondent No. 3 was in possession of assets disproportionate to his known source

of income to the tune of Rs. 53,94,025.58, which he could not account for and after obtaining the sanction for prosecution from the competent

authority, a charge sheet u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 was filed against Sh. M.S. Walia and

charges have been framed and the trial is going on. It is admitted that property in dispute was sealed by the U.T. Police and after taking over the

investigation, the same was taken into possession by the C.B.I. vide observation memo dated 24.4.98. The fact that Dr. Harinder Pal Singh had

moved an application before the Special Judge, C.B.I. Court, Chandigarh was admitted and it was pointed out that the same was dismissed on

9.7.l998, which order was challenged through Criminal Misc. No. 26868 of 1998, which was dismissed on 16.10.2001 with the following

observations :-

It is a disputed question of fact and the ownership cannot be decided in a petition u/s 482 Cr.P.C. It is for the petitioner to take appropriate

proceedings in the Court of Law to establish his title. The petitioner had not claimed possession of any articles lying in the house in question. No

petition has been filed by Sh. M.S. Walia for obtaining back the possession of the house in question along with the articles. In such circumstances

the possession of the house cannot be delivered to the petitioner (H.P. Singh).

8. The SLP against this order was dismissed on 22.2.2002. On 3.6.2003 a joint application was moved again by Dr. Harinder Pal Singh,

Narender Singh Achreja and Sh. M.S. Walia with a prayer to remove the lock/seal from House No. 311, Sector 9-D, Chandigarh and restore the

possession to any one of the applicants. This application was opposed by the C.B.I. but it was disposed of with the observation that since the

house in question was sealed by the police while the same was in possession of Sh. M.S. Walia, he is the peson, who deserves to be delivered the

possession thereof until the disposal of the case. Respondent No. 2 further detailed the circumstances in which on 26.7.2004 in compliance with

the orders dated 21.5.2004 passed by the Special Judge, C.B.I. Court, U.T. Chandigarh, when the C.B.I. approached the premises, the outer

gate thereof was locked from the inside and because of a conflict between the petitioner Guddie-Madanjit Achreja and Sh. M.S. Walia, the

situation became tense and matter was reported to the Court on 27.7.2004. At about 4.00 P.M., Mr. Rajan Gupta, learned Standing Counsel for

the C.B.I. had informed that the High Court had directed the C.B.I. to maintain status quo in regard to the possession of the property of Sh. M.S.

Walia and the position remains the same as on date.

9. During the course of arguments, it came to our notice that the C.B.I. had on 19.9.2005 moved an application u/s 3 of Criminal Law Amendment

Ordinance, 1944 for attachment of movable and immovable properties of accused Sh. M.S. Walia before the Special Judge, C.B.I. Court, U.T.

Chandigarh and the decision regarding this application is also pending before the C.B.I. Court. In view of this, after bringing these circumstances

into the notice of this Court, the C.B.I. prays that appropriate orders may be passed in relation to the case.

10. We have heard Mr. R.S. Mittal, learned Senior Counsel assisted by Mr. Atul Gaur, Advocate for the petitioner, Mr. Rajan Gupta, learned

Standing Counsel for the C.B.I. - respondent No. 2 and Mr. O.P. Goyal, learned Senior Counsel assisted by Ms.Mamta Bhatti, Advocate for

respondent No. 3.

11. The points which arise for consideration by the Court are :-

a) Whether petitioner Guddie Madanjit Achreja is entitled to challenge the order passed by the Special Judge, C.B.I. Court, Chandigarh on

21.5.2004 by which the Investigating Agency has been directed to hand over the possession of the portion of House No. 311, Sector 9-D,

Chandigarh to respondent No. 3- Sh. M.S. Walia ?;

b) Whether in view of the fact that C.B.I. had already moved an application u/s 3 of Criminal Law Amendment Ordinance, 1944 for attachment of

movable and immovable properties of accused Sh. M.S. Walia, it would be appropriate for this Court to comment upon the merits of the case ?;

and

c) If the answers of these questions are in negative, whether this Court when it is seized of the matter in dispute in proceedings under Article 226 of

the Constitution of India can pass any order rectifying any illegality which might have been committed by the trial Court while passing the order

dated 21.5.2004 ?

12. The facts in this case are not disputed inasmuch as that at the time when the case was still being investigated by the Chandigarh Police,

a) The Investigating Officer had sealed the premises in dispute;

b) This order continued to hold the field until an application for modification thereof and consequential return of property moved by Dr. Harinder

Pal Singh was dismissed by Shri S.S. Lamba, Special Judge, C.B.I., Court, Chandigarh. This order was upheld in Criminal Misc. No. No. 26868-

M of 1998, vide order dated 16.10.2001 by Hon''ble K.C. Gupta, J.;

c) The view taken by the High Court was upheld by the Supreme Court in SLP vide order dated 22.2.2002.

d) That on 3.6.2003 Dr. Harinder Pal Singh, Narinder Achreja and M.S. Walia jointly filed an application for return of the property to all or any

one of them and this application was allowed by Shri R.S. Baswana, the then Special Judge, C.B.I. Court, U.T. Chandigarh;

e) Petitioner-Guddie Madanjit Achreja was not heard in this application;

f) Petitioner-Guddie Madanjit Achreja instead of moving an application before the Special Judge, C.B.I. Court, U.T., Chandigarh for

reconsideration of the entire matter in the light of the objections raised by her has filed the present writ petition;

g) During the pendency of this writ petition, parties have been directed to maintain status quo regarding possession and the order dated 21.5.2004

passed by Shri R.S. Baswana, Special Judge, C.B.I. Court, Chandigarh has not been implemented; and

h) That again during the pendency of this writ petition, on 19.9.2005 the C.B.I. has moved an application u/s 3 of Criminal Law Amendment

Ordinance, 1944 for attachment of movable and immovable properties of accused Sh. M.S. Walia, which would render irrelevant the controversy

which is sought to be raised before us.

13. We, therefore, are called upon to deal with the situation where the Special Judge, C.B.I. Court, U.T. Chandigarh had without taking into

consideration the fact that his predecessor had already dismissed the application for release of property, had passed order which in fact amounts to

reviewing the order dated 9.7.98 passed by Shri S.S. Lamba, Special Judge, U.T. Chandigarh. While doing so, he seems to be oblivious of the

fact that he might be violating the bar incorporated u/s 362 of the Code of Criminal Procedure, which prevents him from reviewing the order,

which had been passed by his predecessor on an application merely because two other persons have joined in the application. He ought also to

have taken into consideration the rights of every one having interest in the property but that by itself may not vitiate the order because any one

aggrieved by the absence of notice i.e. Sh. M.S. Walia and Sh. Narinder Singh Achreja could always have approached the trial Court with a

prayer to pass a fresh order after hearing the aggrieved party. This was not done by the aforesaid persons nor has the petitioner chosen to adopt

this course. Instead of doing so, the petitioner moved this Court in its extra-ordinary writ jurisdiction and this Court on 27.7.2004 directed the

parties to maintain status quo in relation to the handing over of possession of House No. 311, Sector 9, Chandigarh by the C.B.I. (respondent No.

2).

14. The matter has been further complicated by the fact that the Investigating Agency probably at the behest of the appropriate Government has

moved an application u/s 3 of Criminal Law Amendment Ordinance, 1944 for attachment of movable and immovable properties of accused M.S.

Walia, which reads as under :-

Application for attachment of property :- (1) Where the State Government or as the case may be the Central Government has reason to believe

that any person has committed (whether after the commencement of this Oridnance or not) any scheduled offence, the State Government or as the

case may be the Central Government may whether or not any Court has taken cognizance of the offence, authorise the making of an application to

the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this

Ordinance of the money or other property which the State Government or as the case may be the Central Government believes the said person to

have procured by means of the offence, or if such money or property cannot, for any reason, be attached, or other property of the said person of

value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of the Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to a proceeding for an order of

attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said

person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by

means of the offence. The application shall also furnish :-

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars,

including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believes to have or to be likely to claim, any interest or title in the property of the said person.

before the Special Judge, C.B.I. U.T. Court, Chandigarh. This Ordinance was promulgated by the then Governor General in 1944 in exercise of

the powers u/s 72 of the 9th Schedule of the Government of India Act, 1935, which reads as under :-

Powers to make ordinances in cases of emergency :- The Governor- General may, in cases of emergency, make and promulgate ordinances for

the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months

from its promulgation have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is

subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like

disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

and, therefore, has a status of an Act. It was promulgated to achieve the following object:-

Whereas an emergency has arisen which makes it necessary to provide for preventing the disposal or concealment of money or other property

procured by means of certain offences punishable under the Indian Penal Code.

It was probably to achieve this object that Ordinance provided for an ad- interim attachment u/s 4 of Criminal Law Amendment Ordinance, 1944,

which reads as under:-

4. Ad interim attachment :- (1) Upon receipt of an application under Sec. 3, the District Judge shall, unless for reasons to be recorded in writing he

is of the opinion that there exist no prima facie grounds for believing that the person in respect of whom the application is made has committed any

scheduled offence for that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or

other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other

property of the said person of equivalent value as the District Judge may think fit :

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or

persons making the affidavits accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is

being attached, a notice, accompanied by copies of the Order, the application and affidavits and of the evidence, if any, recorded, calling upon him

to show should not be made absolute.

(3) The District Judge shall also issue, accompanied by copies of the document accompanying the notice under sub-section (2), to all persons

represented to him as having or being likely to claim, any interest, or title in the property of the person to whom notice is issued under the said sub-

section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so

desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him

under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section

(3) as the case may be, of Section 5.

Though the Ordinance initially extended to offences under the Indian Penal Code yet through an amendment introduced by Act No. 49 of 1988

Clause 4-A had been added in the schedule, which extends the same to an offence punishable under the Prevention of Corruption Act, 1988. This

most important but unfortunately least resorted to provision was probably introduced with a view to prevent the use of ill-gotten gains for defending

the person, who was being tried for offences listed in the scheduled. The object was to neutralise the effective use of money power accumulated by

unwarranted means for financing the defense as well as conversion/using the same for otherwise legitimate investments. Having gone through the

file, we find that though the application was moved on 19.9.2005 no orders in terms of Section 3 of Criminal Law Amendment Ordinance, 1944

have been passed till this date nor the prosecution even sought for an order in these terms. The mere fact that the Court is seized of the matter does

not absolve the Public Prosecutor in the case of the responsibility of insisting for adjudication in accordance with law. This is unfortunate as it only

helps in scuttling the very purpose of the Ordinance.

15. In view of all the infirmities which have come to our notice in the present case, although we are, prima-facie, of the view that the writ petition as

presently framed is pre-mature and no relief can be given to the petitioner-Guddie Madanjit Achreja yet we are of the considered view that a

direction will have to be issued to the Special Judge, C.B.I. Court, U.T. Chandigarh to take up the application filed by the C.B.I. u/s 3 of the

Criminal Law Amendment Ordinance, 1944 for attachment of movable and immovable properties of accused M.S. Walia forthwith and pass

appropriate order thereon in accordance with law. In case application cannot be finally disposed of on the next date of hearing, it will pass an

appropriate orders in terms of Section 4 of the (Criminal Law Amendment) Ordinance, 1944.

The writ petition is accordingly disposed of leaving the parties to bear their own costs.

The Registry is directed to immediately send a copy of this order to the Special Judge, C.B.I. Court, U.T. Chandigarh.