

Madan Singh Vs Hira Lal And Others

Court: High Court of Himachal Pradesh

Date of Decision: March 20, 2019

Acts Referred: Hindu Succession Act, 1956 " Section 14
Limitation Act, 1963 " Article 136

Hon'ble Judges: Ajay Mohan Goel, J

Bench: Single Bench

Advocate: Maan Singh, Satyen Vaidya, Varun Chauhan

Final Decision: Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this petition, the petitioner has assailed order dated 10.1.2018 (Annexure P-9), vide which objections filed by petitioner to the execution

filed by decree holders stand rejected by learned Executing Court.

2. Brief facts necessary for adjudication of the present case are as under:- Respondents-decree holders filed an Execution Petition for possession of

the suit land comprised in khasra No. 624 (old), new khasra No. 119, situated in Phati Shirad, Tehsil and District Kullu, as per decree dated 5.7.1955

passed in favour of the predecessor-in-interest of decree holders.

3. According to the decree holders, their predecessor-in-interest, Sohan Lal, had filed a suit against the predecessor-in-interest of judgment debtors

with regard to khasra No. 624 situated in Phati Shirad, Tehsil and District Kullu measuring 0-7-65 hectares i.e., Civil Suit No. 25/1954 which was

decreed vide decree dated 5.7.1955, wherein Sale Deed pertaining to the suit land was set aside by holding that the same was without any need and

predecessor-in-interest of decree holders were held entitled to the suit land after the death of Sarsuti Devi predecessor-in-interest of JD No.1 on

payment of `350/-.

5. Sarsuti Devi (original defendant No.2) died on 19.1.2007. JD No.1 was her successor-in-interest, whereas JD No.2 to 9 were legal heirs of Krishan

Dass original defendant No.1. JD No.10 was successor-in-interest of JD No.2 Sohan Lal.

4. As per decree holders, JD No. 3 was asked and requested to accept `350/- and hand over possession of the suit land. As they had not done so,

therefore the execution petition was filed.

5. Petitioner Madan Singh filed objections to the execution petition on the following grounds. (a) Smt. Sarsuti Devi was absolute owner of the entire

estate and had every right to deal with the same in her capacity as its owner. Decree holders/petitioners were not the legal representatives of

deceased Sohan Lal; (b) Sarsuti Devi had become absolute owner of the suit land after coming into force of Hindu Succession Act, therefore, the

decree was not executable; and (c) Judgment debtor Madan Singh had become absolute owner of the suit land by way of adverse possession, as his

possession over the suit land was uninterrupted, continuous and hostile.

3. Learned Executing Court on the basis of objections filed to the execution petition framed the following issues:-

1. Whether Smt. Sarsuti Devi has become absolute owner of the suit land after the death of Abhir Dass? OPP

2. Whether the decree is inexecutable in view of Section 14 of the Hindu Succession Act, 1956, as alleged ? OPO

3. Whether the execution petition is barred by limitation, as alleged ? OP-Objector

4. Whether the objectors/JDs have become owners of the suit land by way of adverse possession, as claimed? OPD

5. Whether the objections are not maintainable and sustainable, as alleged? OPP

6. Relief.

4. Findings returned on the said issues by the learned Executing Court are as under:-

Issue No.1 No

Issue No.2 No

Issue No.3 No

Issue No.4 No

Issue No.5 Yes

Relief Objection petition is dismissed per operative portion of the order.

5. Learned Executing Court after discussing the evidence led during the course of execution proceedings held that objectors had failed to prove that

Sarsuti Devi had become absolute owner of the suit land after the death of Abhir Dass. Learned Court also held that Hindu Succession Act came into

force on 17.6.1956, whereas the decree was passed on 5.7.1955 i.e., before coming into force of Hindu Succession Act. It further held that the

objection that JDs had become owners of the suit land by way of adverse possession was not tenable, as they had failed to lead any cogent evidence

to prove the same. It went on to negative the contentions of the objectors that execution petition was time barred by holding that the same was

executable under Article 136 of the Limitation Act in view of the law laid down by Hon'ble Supreme Court in Rattan Singh Vs. Vijay Singh, AIR

6. I have heard learned counsel for the parties and have also gone through the impugned order as well as record of the case.

7. It is not in dispute that a decree was passed in favour of the predecessor-in-interest of respondents-decree holders and against the predecessor-in-

interest of the present petitioner. It is not in dispute that the decree passed in favour of the decree holder was that decree holders was held entitled to

the suit land after the death of Sarsuti Devi on payment of `350/-. The objections raised by the petitioner and other objectors have been dealt with in

detail in the impugned order by learned Executing Court. The reasons assigned by learned Executing Court while dismissing the objections are in detail

spelt out in the impugned order and learned counsel for the petitioner could not point out that the reasons were not borne out from the record of the

case. It is a matter of record that the decree in issue was passed on 5.7.1955, therefore, there is no force in the contention of the petitioner that

Sarsuti Devi had become absolute owner of the suit land after the death of Abhir Dass. As far as petitioner having become owner of the suit land by

way of adverse possession is concerned, learned counsel could not point out any cogent evidence in this regard on record to prove this fact. He also

could not substantiate as to how the execution petition was time barred. On the other hand, learned Executing Court has assigned reasons and also

supported its findings on the judgment of Hon'ble Supreme Court as to why execution petition was not barred by limitation.

That being so, apparently there is no perversity in the order passed by learned Executing Court as petitioner has not been able to point out that the

findings returned therein are either perverse or not relateable to the record of the case. No jurisdictional error could be attributed to the order

impugned during the course of arguments by learned counsel for the petitioner. As the order passed by learned Executing Court is both self speaking

and reasoned order and the reasoning assigned therein is duly borne out from the record of the case, this Court does not find any reason to interfere

with the same. Thus as there is no merit in this petition, the same is accordingly dismissed.