REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1885 OF 2008

Lekh Raj(Dead) Through L.Rs.
& Ors. ....Appellant(s)

VERSUS

Ranjit Singh & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by the judgment-debtors (defendants) against the final judgment and order dated 04.08.2006 passed by the High Court of Punjab and Haryana at Chandigarh in C.R. No. 3823 of 2005 whereby the High Court dismissed the civil revision filed by the appellants herein against the order dated 16.07.2005 of the Additional

District Judge, Jagadhri which upheld the order of the executing Court dated 12.05.2005.

2) We herein set out the facts, in brief, to appreciate the issue involved in this appeal.

3) The proceedings, which are traveled to this Court in appeal, arise out of the execution initiated by the respondents(plaintiffs/decree-holders) against the appellants(defendants/judgment-debtors) in relation to suit land (agriculture) bearing Kill Nos. 1/19, 1/22, 1/23, 1/24 and 2 measuring 119 Kanals 7 Marlas situated in village Isharpur, Tahsil Jagadhari, District Yamuna Nagar on the basis of the judgment and decree dated 14.05.1965 passed by Additional District Judge (II), Ambala in Appeal No. 185 of 17.02.1964 which arose out of Civil Suit No. 461/1962 decided on 27.11.1963 in respondents' favour.

4) The respondents filed a civil suit against the appellants' predecessor-Lekhraj seeking a declaration and other consequential reliefs in relation to the aforementioned suit land. The suit was filed by the plaintiffs asserting *inter alia* their customary rights which were, at the relevant time, recognized in law in the suit land for claiming reliefs against the defendants.

5) Though the suit came to be dismissed by the Trial Court, it was decreed in an appeal filed by the plaintiffs by the Additional District Judge(II) Ambala vide appellate judgment/decree dated 14.05.1965 as detailed above. This appellate decree became final because the defendants did not further challenge the decree in second appeal.

6) The operative portion of the appellate judgment/decree, which resulted in decreeing the plaintiffs' suit, reads as under:

> **"6..... In view of my finding above, I, therefore, hereby setting aside the**

judgment and decree of the trial court accept the appeal and grant the plaintiffs a declaration that the sale of the land in dispute by defendant No.2 in favour of defendant No.1 shall not effect the rights of inheritance after the death of their father Kanshi Ram and that they shall be entitled to its possession on his death on payment of Rs.2000/- to defendant No.1. In case they do not want to avail of the decree as is granted to them for declaration, they shall be entitled to possession of the land in dispute on payment of Rs.5000/- to defendant No.1 which shall be deposited by them on or before 14/6/65. The parties shall bear their own costs throughout."

7) It is this decree, which was put in execution by the decree holders (respondents herein) against the appellants (judgment-debtors) in the Executing Court. The appellants, on being noticed, entered appearance and raised several objections to the execution of the decree.

8) According to the appellants, first, the execution application filed by the respondents was barred by time; second, the father of the decree holders having purchased another property in exercise of his right of pre-emption through sale

deed, the decree in question had become unexecutable; third, no notice of the proceedings was served on the appellants and hence execution application was not maintainable; fourth, the decree holders having failed to deposit the money in terms of the decree, they had lost their right to file the execution application; fifth, since in the meantime, the judgment-debtors made investment in the suit land and made it cultivable by planting the trees/crops and also installed the tube-well, the decree became unexecutable against them; sixth, the suit land being in joint ownership of several parties so long as it was not partitioned amongst all the co-owners, the decree holders had no right to claim any right in the suit land. These were essentially the objections taken by the judgment-debtors in their reply to oppose the execution of the decree in question.

9) The Executing Court, by order dated 12.05.2005, overruled all the objections holding them to be wholly frivolous and devoid of any merit. In consequence, the executing Court allowed the execution application to give effect to the terms of the decree.

10) The judgment-debtors, felt aggrieved, filed appeal before the Additional District Judge. The appellate Court by order dated 16.07.2005 dismissed the appeal and affirmed the order of the Executing Court. The judgment-debtors, felt aggrieved, filed revision before the High Court. By impugned order, the High Court dismissed the revision and affirmed the orders of the Executing and Appellate Court, which has given rise to filing of this appeal by the judgment-debtors.

11) Heard Mr. Ajay Pal, learned counsel for the appellants and Mr. Neeraj Kumar Jain, learned senior counsel for the respondents.

12) Learned counsel for the appellants (judgment-debtors) while attacking the legality and correctness of the impugned order raised only one point. In other words, all the objections on which the decree in question was challenged before the Executing Court, first appellate Court and lastly before the High Court were given up and the challenge was confined only on one legal point.

13) According to learned Counsel, the decree in question was rendered nullity in the light of the amendment made in 1973 in the Punjab Custom (power to Contest) Act, 1920 (hereinafter referred to as "the Act"). It was urged that the rights of the plaintiffs (decree holders) on which their suit was based were, at the relevant time, governed by the provisions of the Act but the amendment made in 1973 took away those customary rights. It was urged that the amendment was held retrospective in its operation by this Court in two decisions in

Darshan Singh Vs Ram Pal Singh & Anr., (1992) Supp (1) SCC 191 and **Kesar Singh and others vs. Sadhu** (1996) 7 SCC 711 and hence the very basis of filing the suit stood withdrawn by reason of amendment. It was, therefore, urged that it is for this reason, the decree in question had become nullity. It was urged that since the objection, apart from being legal, goes to the root of the case, hence, it is permissible to raise such objection in execution proceedings.

14) In our considered opinion, the submission is wholly misconceived and deserves rejection on more than one ground detailed infra.

15) First, this objection was neither raised before the Executing Court nor the first appellate Court and nor the High Court. In other words, when the objection was not even raised at any stage of the proceedings then it cannot be allowed to be raised for the first time in this appeal. Nothing prevented

the judgment-debtors to raise this objection along with several other objections to enable the Courts to record their finding on such objection. It was, however, not done.

16) Apart from what is held above, assuming for the sake of argument that the judgment-debtors could raise such objection and raised it, yet in our view, it had no merit. It is for the simple reason that the suit and the appeal, which arose out of the suit, stood already decided much prior to the date of amendment coming into force. In other words, the suit/appeal remained unaffected with the amendment.

17) It is clear from the fact that the suit was filed in 1962 whereas the appellate Court passed the decree in 1965 and the amendment in the Act was introduced and came into force in 1973. So the *lis* had already attained the finality much before the amendment came into force.

18) Second, the amendment was held retroactive in nature as would be clear from Para 4 of **Kesar Singh**(supra), which reads as under:

> **"4. The controversy is no longer res integra. This Court in *Darshan Singh* v. *Ram Pal Singh, 1992 Supp(1) SCC 192* considered the effect of the Amendment Act, 1973 on the customary right of the Punjab Custom (Power to Contest) Act, 1920 and held that: (SCC pp. 219-22, paras 51-60)**
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> > **"Considering the above principles, the provisions of the principal Act, the statement of objects and reasons and the provisions of the Amendment Act and the decisions of the Punjab High Court and of this Court, we are of the view that Section 7 of the principal Act as amended by the Amendment Act is retroactive and is applicable to pending proceedings. The decisions of this Court dated 28-11-1986 in *Ujaggar Singh* v. *Dharam Singh, CA No.1263 of 1973(SC)* and in *Udham Singh* v. *Tarsem Singh, CA No.1135 of 1974(SC)* dated 15-7-1987 do not need reconsideration."**
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> > **(emphasis supplied)**

19) Third, the amendment being retroactive, it was applicable only to those proceedings, which were pending on the date when the amendment came

into force, i.e. 1973, or where the proceedings were initiated after the date of amendment.

20) In our considered view, in order to take benefit of the amendment, it was necessary for the appellants (judgment-debtors) to have filed the second appeal against the decree of the first appellate Court and if the second appeal had been decided after 1973, the impact of the amendment on the rights of the parties could have been considered in the context of the amendment in the light of law laid down by this Court in **Kesar Singh's case** (supra). It was, however, not done because, as mentioned above, the decree in question had already attained the finality in 1965.

21) If the rights of the parties had already been crystallized then, in our opinion, subsequent change in law would not take away such rights which had attained finality due to *lis* coming to an end *inter se* the parties prior to such change.

22) In the case of **Kesar Singh**(Supra), the plaintiff had filed the suit in 1978 and second appeal arising out of the suit in 1979, so, the *lis* was initiated after 1973. It is due to this reason, it was held that the rights of the parties were governed by the amending Act. Such is not the case here. The law laid down in **Darshan Singh** and **Kesar Singh** (supra) cannot, therefore, be applied to the facts of this case.

23) There is one more distinguishing fact due to which law laid down in **Darshan Singh** and **Kesar Singh** (supra) cannot be applied to the facts of this case. It is not in dispute that the provisions of the Amendment Act of 1973 are applicable only to the State of Punjab whereas the case in hand arises out of State of Haryana. There is nothing on record to show that the provisions of this Act were extended to the State of Haryana also and, if so, since when and by which adaptation of the laws.

24) It is for these reasons, we are of the view that the submission urged by the appellants questioning the decree as being nullity is devoid of any merit and deserves rejection.

25) Though learned counsel for the appellants did not attack the concurrent findings of the two courts in this appeal, yet we have perused the findings and find that they were properly recorded. In the first place, the objections raised were all on the facts which could not be enquired into execution proceedings. Second, it is a settled principle of law that the executing Court cannot go behind the decree. This principle squarely applies to the facts of this case because all the factual objections raised by the appellants could be raised only in the suit in its trial but not in execution proceedings. In other words, any enquiry into the objections would have taken the executing Court behind the decree which was not permissible in law.

26) In the light of foregoing discussion, we find no merit in the appeal, which fails and is hereby dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
August 16, 2017