

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CR 2087 of 2015

Date of Decision: April 1, 2015

Salam Din

.....Petitioner

Vs.

Anwari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Mohd. Yousaf, Advocate  
for the petitioner.

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**M.M.S. BEDI, J. (ORAL)**

Plaintiff- petitioner alongwith Mohd. Yamin, proforma respondent No.13, had filed a suit for possession by way of specific performance of an agreement of sale for enforcement of their legal rights on the basis of the agreement of sale dated February 18, 2000 by virtue of which, five defendants, Mohd. Anwar, Aaisan, Gafroon, Anwari and Hanifan had agreed to sell their respective shares in the land mentioned in the heading of the plaint. The plaintiff- petitioner and respondent No.13 obtained an ex-parte decree of specific performance of the agreement of sale dated February 18, 2000 against all the above said five defendants. Mohd.

Anwar and Anwari filed applications under Order 9 Rule 7 CPC and Order 9 Rule 13 CPC. The said applications were dismissed by the trial Court, however, these were allowed by the Additional District Judge, Sangrur vide order dated November 14, 2014.

Counsel for the petitioner has contended that the application for setting aside the ex-parte decree had been filed by Mohd. Anwar and Anwari only. He has referred to the contents of the judgment passed by Additional District Judge, Sangrur which indicates that two appeals were filed against the dismissal of the application under Order 9 Rule 13 CPC by Mohd. Anwar and legal heirs of Anwari. The operative part of the judgment indicates that the ex-parte judgment and decree has been set aside against Mohd. Anwar, defendant No.1 as well as other defendants i.e. defendants No.2 to 5.

During the course of arguments, learned counsel for the petitioner has admitted that originally all the defendants had filed application under Order 9 Rule 13 CPC but two separate appeals had been filed only by defendant No.1 and defendant No.4 i.e. Mohd. Anwar and Anwari, respectively.

I have considered the facts and circumstances of this case. The impugned order had been challenged by Mohd. Anwar by filing CR No. 104 of 2014, which was dismissed by a Coordinate Bench of this Court on January 8, 2015. The fate of the revision petition qua Anwari or her legal heirs also deserves to meet the same fate on the principle of parity. No

ground is made out for interference, so far as the revision petition qua heirs of Anwari is concerned.

I have carefully considered the contention of learned counsel for the petitioner regarding the validity of the order passed by the Appellate Court setting aside the ex-parte decree qua all the defendants when only two defendants had preferred the appeal against the dismissal of the application under Order 9 Rule 13 CPC. The lower Appellate Court had been called upon to determine the legality and propriety of the order dismissing the application under Order 9 Rule 13 CPC qua the defendant- respondents. The rights of the defendants who had not preferred appeal are at par with the rights of the defendants who had opted to prefer the appeal. In the present case the rights of the defendants cannot be separated as they are co-sharers in the property which was alleged to have been agreed to be sold to the plaintiff-petitioner and proforma respondent No.13. The lower Appellate Court had exercised powers of Appellate Court. The powers vested in Appellate Court under Order 43 CPC are akin to the powers under Order 41 CPC, enabling the Appellate Court to exercise appellate jurisdiction against defendants. Order 41 Rule 33 CPC empowers an Appellate Court to pass any order which ought to have been passed in favour of one or any of the respondents or parties although such respondent or parties may not have filed any appeal or objection. In the present case, ex-parte decree against the defendant- respondents does not appear to be separable for the purpose of execution. As the defendant- respondents had vide one agreement of sale

entered into the agreement to sell their respective shares, I do not find any force in the contention of learned counsel for the petitioner that the lower Appellate Court did not have any power to set aside the ex-parte judgment and decree qua all the defendants when only two of the defendants had preferred the appeal. No ground is made out for interference. Expecting that the suit will be decided expeditiously, the present petition is dismissed.

April 1, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE