

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.R. No. 6293 of 2015 (O&M)

Date of decision:- 23.09.2015

Charanjit Singh and anr.

...Petitioner

Versus

Gurdial Bhalla and anr.

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Parminder Singh-I, Advocate
for the petitioners.

RITU BAHRI J.

Plaintiff has filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 06.08.2014 (Annexure P-7) passed by learned Addl. District Judge, Hoshiapur whereby appeal filed by respondent No. 1 was accepted and the application filed by the plaintiffs/petitioners under Order 39 Rule 1 and 2, was dismissed and order dated 10.07.2014 passed by Addl. Civil Judge, Sr. Divn. Dasuya (P-6) be restored.

The petitioners filed suit for possession as owners of land to the extent of 4/5th share out of the land measuring 83 kanals 13 marlas i.e 66 kanals 18 marlas and 16 kanals 14 marlas i.e 1/5th share of proforma-respondent No. 2/defendant, situated in village Rasoolpur, Hadbast No. 42, Tehsil Dasuya, District Hoshiarpur as per jamabandi for the year 2009-2010 by way of specific performance of the agreement to sell dated 13.03.2008 after the payment of balance sale consideration of Rs.5,18,81,250/- or in the

alternative suit for recovery of Rs.8 lacs i.e Rs.4 lacs on account of refund of earnest money plus Rs.4 lacs as damages thereon. Defendant No. 1 had appointed Gurmukh Singh as his general power of attorney vide document No. 212 registered before Joint Sub Registrar Tanda, vide attorney dated 29.06.2005 and Gurmukh Singh had executed an agreement to sell dated 13.03.2008 in favour of the petitioners having 4/5th share and defendant No.2 having 1/5th share to sell property for sum of Rs.5,22,81,250/- at the rate of Rs.50,00,000/- per acre. Rs. 4 lacs was paid as earnest amount and the sale deed was to be executed on 14.09.2009 on payment of balance sale consideration. Gurmukh Singh expired in the meantime. On 14.09.2009, Gurdeep Singh and Jagdish Chand remained present in the office of Joint Registrar Tanda along with balance sale consideration but defendant No. 1 nor his attorney turned up to perform his part of contract. Thereafter, the application moved by the petitioners for ad-interim injunction (P-5) was accepted vide order dated 10.07.2014 passed by Addl. Civil Judge, Sr. Divn. Dasuya and the petitioners were given relief of temporary injunction to the extent of their share in the property. This order was set aside by learned Appellate Court vide order dated 06.08.2014 by accepting the appeal of respondent No. 1 and the application filed by the petitioners was ordered to be dismissed. The Lower Appellate Court observed that the power of attorney would show that the general power of attorney was granted in which the powers were given to the attorney for encashing cheques, for mortgaging property without possession, to give it on lease, transfer, to

make any kind of agreement with the party to give property on rent and to give receipt of the same. The words, 'to sale, divide' have been interpolated in between two lines. Further it was held that no sensible person would block his property worth Rs.6 crore by accepting just Rs.4 lacs by way of earnest money. Further proforma-defendant in his written statement has stated that the document was in fact executed as surety of loan to return Rs.3 lacs which were received by the attorney of defendant No. 1.

After hearing learned counsel for the petitioner at length, the petition deserves to be dismissed on the grounds mentioned below.

Firstly, the proforma defendant in his written statement has very clearly stated that this document was in fact executed as surety of loan to return Rs.3 lacs which were received by the attorney of defendant No. 1 for incurring expenses on petrol pump.

Secondly, no person would block his 6 crores rupees by just accepting Rs.4 lacs as earnest money. Had substantial amount been paid out of the total sale consideration amount, then it could be considered that the right of the purchaser would be affected in case the property is disposed of by the owner or any charge is created thereupon.

In view of the above, no ground is made out to set aside order order dated 06.08.2014 (Annexure P-7) passed by learned Addl. District Judge, Hoshiapur. The revision petition is dismissed accordingly.

September 23, 2015
G Arora

(**RITU BAHRI**)
JUDGE