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

**CR No.7931 of 2011 (O&M)**

**Date of decision: March 31, 2015**

Sheela Rani

.....Petitioner

Versus

Sarbjit Kaur

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE SABINA**

**Present:** Mr. Ajay Pal Singh, Advocate  
for the petitioner.

None for the respondent.

**SABINA, J**

Petitioner has filed this petition challenging the order dated 20.09.2011.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

The executing Court while dismissing the execution petition filed by the petitioner, has held as under:-

*“Apparently the sale deeds dated 12.08.2002 and 29.05.2002 were executed by the respondent much prior to the institution of the suit No.55 of 23.03.2003 and as such, the principles of lis pendens as provided under Section 52 of Transfer of Property Act does not apply nor does the provisions of order 64 CPC applies as the property was also not under attachment. Thus the fact remains that when the decree in execution was on dated 26.05.2007, the respondent was not having any land in question*

*measuring 0 bighas 10 biswas but it was already reduced much prior to the institution of the suit and this fact has never been brought before the Court while passing the decree. As such, the decree passed in favour of the applicant itself is not executable and cannot be executed qua the property, which was not even in existence at the time when the suit was filed or the decree was passed. As such, the decree itself is not executable in its entirety and cannot be enforced against the said respondent at all, as the property with regard to which the decree was passed, was not in existence at that time nor is in existence till date and the decree cannot be enforced against the persons, who were neither party to the suit nor have acquired any interest or title during the pendency of the main suit. Hence, in view thereof, the decree itself is not enforceable and as such the instant application becomes infructuous and is liable to be dismissed. However, the applicant shall be at liberty to get reimburse the amount of Rs.5000/- which had been deposited by her with the Court, if any.”*

In the present case, petitioner had filed suit for specific performance of agreement to sell dated 30.01.2002. Suit filed by the petitioner was decreed vide judgment/decreed dated 26.05.2007. Thereafter, petitioner filed execution petition. During execution proceedings, it transpired that the property in question had already been sold by the judgment-debtor vide sale-deeds dated 12.08.2002 and 29.05.2002 before the institution of the suit. In these circumstances, the executing Court rightly held that principle of *lis pendens* will

not apply as sale deeds had been executed prior to the institution of the suit. However, the decree could not be executed, as on the date of passing of decree, respondent was no longer the owner of the land in question.

The reasons given by the executing Court while dismissing the execution petition are sound reasons and call for no interference.

Dismissed.

**(SABINA)  
JUDGE**

**March 31, 2015**

*m.singh*