

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

120

CR-7730-2015

Date of Decision:19/11/2015

SATWANT SINGH AND ORS.

... Petitioners

Versus

KULWINDER SINGH AND ORS.

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Agnihotri, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

1. Petitioners are defendants in a suit for specific performance. They have already shown their readiness and willingness to perform their part of obligation. According to them, they got their presence marked, plaintiffs did not turn up to execute the sale deed on paying the remaining sale consideration.

2. On 15.03.2014, trial Court passed the following order:-

“..... Learned counsel for the defendants further submitted that they got themselves marked presence but the plaintiffs did not turn up to execute the sale deed on paying the remaining sale consideration of which the plaintiffs requested that they are still ready for getting the sale deed executed in their favour by payment of remaining sale consideration to which even learned counsel for the defendants agreed. In view of submissions made by learned counsel for the parties, the

plaintiffs are directed to deposit the remaining sale consideration on 07.04.2014, failing which the Court shall be constrained to draw adverse inference regarding their non readiness towards the execution of sale deed.”

3. Feeling aggrieved with this order, plaintiffs filed CR No.8589 of 2014 which was decided by the Coordinate Bench of this Court on 20.01.2015 by passing the following order:-

“Petitioners have invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India, seeking to set aside the orders dated 28.10.2014 and 15.3.2014, passed by the learned Additional Civil Judge (Senior Division), Amloh.

Learned counsel for the petitioners submits that the petitioners want to challenge the impugned order on merits without praying for further concession of time for making deposit of the balance of sale consideration. It is further submitted that the petitioners would fortify during the trial their stand that they have not deposited the remaining amount of sale consideration because the respondents are in fact, responsible for not getting the land demarcated for providing passage.

That of course is the proposition based on facts and law involved in the instant case and if the trial Court finds that respondents are responsible for breach of agreement, on the ground that demarcation of the disputed land has not been made for providing passage to the petitioners, that would a question of merits which

may have bearing on the merits of the case.

After hearing learned counsel for the petitioners, I find no ground to interfere in the matter.

The instant petition is disposed of.”

4. Apparently, this Court relegated the parties to have proper appreciation of evidence at the time of final arguments on merits.

5. Thereafter, the defendants moved an application before the trial Court in the context of non-compliance of order dated 15.03.2014 and sought dismissal of the suit on that premise. That prayer has been declined by passing the impugned order against which present revision petition has been filed.

6. The trial Court has passed the following order while dismissing the application:-

..... 4. *“After considering the rival contentions of the learned counsel for the parties, this Court is of the considered view that vide order dated 28.10.2014 this court has already held that demarcation of suit property and providing of passage is matter of evidence and the issues were framed and the case was fixed for evidence of the plaintiffs. The Hon'ble High Court in its order dated 20.01.2015 also held that 'that of course is the proposition based on facts and law involved in the instant case and if the trial court finds that respondents are responsible for breach of agreement, on the ground that demarcation of the disputed land has not been made for providing passage to the petitioners, that would a question of merits which may have being on the merits of*

the case. Further, whether the plaintiffs have not complied with the order of the court or whether or not there exists passage for approaching to the suit property and whether as per agreement to sell the defendants were liable to provide the passage to approach to the suit property to the plaintiffs shall be seen after weighing the evidence led by both the parties. In view of above discussion at this stage no ground is made out for allowing the application and same stands dismissed.

7. I have considered the submissions made by the learned counsel for the petitioners.

8. Learned counsel for the petitioners has submitted that the order passed by the high Court in CR No.8589 of 2014 is ex parte order without issuing notices to the present petitioners. In fact a demarcation had already been conducted and a copy thereof has already been produced before the trial Court on 16.01.2013 and this aspect of the matter could not have been appreciated by the High Court in the absence of any notice issued to the petitioners. Moreover, the same was conveniently concealed by the plaintiffs-petitioners of that revision petition. Since in the order dated 20.01.2015, the observations have been made that the matter shall be considered on merits and the breach of agreement on the ground of non-submission of demarcation report of the land in dispute for the purposes of providing passage to the petitioners was to be considered on merits of the case, therefore, this Court is of opinion that no order in the context of application for dismissal of the suit can

be passed at this stage. However, petitioners would be at liberty to seek review of the observations made in the order dated 20.01.2015 passed by this Court in CR No.8589 of 2014 particularly in view of the background that the defendants claimed themselves to be ready and willing to perform their part of contract at all the stages of litigation.

Disposed of.

19.11.2015

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(RAJ MOHAN SINGH)
JUDGE