

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-804-2015

Date of decision: 4.2.2015

Suraj Bhan

..... Petitioner

Versus

Bhadu and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Krishan Singh, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India, seeking to set aside the order dated 13.1.2015 (Annexure P-6) passed by the Executing Court whereby the application filed by petitioner seeking permission to frame issues and lead evidence was dismissed.

2. I have heard learned counsel for the petitioner and carefully perused the impugned order as well as the paper book.

3. Suit No. 575 of 1994 was instituted by respondent No. 1- Bhadu on 8.10.1994 for possession of property in question (bara) on the ground that petitioner-defendant had illegally and forcibly occupied this

property in the year 1990. The bara in question was allotted to respondent No. 1-DH by the Haryana Government in the year 1981 being non-proprietor and he had been in possession of the said bara since the allotment. The suit was decreed by the trial Court vide judgment and decree dated 3.8.2000 (Annexure P-1) i.e. after the matter remained pending for 6 years. This judgment admittedly, had attained finality and execution of the judgment is pending.

4. Learned counsel for the petitioner submits that marriage of the daughter of the petitioner-JD is fixed for 15.2.2015. It is further submitted that suit for specific performance of agreement to sell dated 1.6.2006 has also been filed as there was an agreement executed by respondent No. 1 in favour of petitioner. The learned Executing Court, in the impugned order observed as under:-

“.....Perusal of the file show that earlier the present execution petition was ordered to be adjourned sine die vide order dated 09.08.2010 with the observation that Hon'ble High Court has passed status quo order qua the suit property. However, vide order dated 04.02.2013 Hon'ble High Court has allowed the JDs to withdraw the appeal and accordingly the appeal pending before Hon'ble Additional District Judge, Yamuna Nagar at Jagadhri has been withdrawn by JDs on 06.04.2013. Thereafter, on the application of DH the present execution petition which was adjourned sine die was

ordered to be restored and even JD's were allowed to file amended objections.

The main thrust of the JD's is that on 01.06.2006 i.e. after the passing of the decree in question, the DH has entered into an agreement to sell out the suit property with JD no. 1 and the JD no. 1 had already filed a separate suit for specific performance of said agreement to sell dated 01.06.2006. Hence, a prayer for framing of issues to that effect as well as permission to lead evidence has been made. In the considered opinion of this court, the JD's have preferred the objections for the sake of objection and the same has no merit in the eyes of law. The question of genuineness of the agreement to sell dated 01.06.2006 cannot be adjudicated in this execution petition. Further, it cannot be adjudicated upon by the executing court whether the JD entitled to specific performance of agreement to sell dated 01.06.2006 or not? Rather as stated earlier, the JD no. 1 had already preferred a separate civil suit qua specific performance of agreement to sell dated 01.06.2006. Hence, the JD is at liberty to lead evidence qua the agreement to sell dated 01.06.2006 in that suit. Thus, there is no necessity to frame any issue in this execution petition.

There is no other point raised by JD's as to why the present decree dated 03.08.2000 is not executable. Since the decree in question has already attained finality, hence, this court has no option but to give force to the decree dated 03.08.2000 by getting it executing. Perusal of the file also shows that the applicant/JD has moved one application after another to avoid the execution of the decree in question. Thus, the objections filed on behalf of JD's are frivolous and have no force in the eyes of law. Thus, no case is made out for framing of any issue on the objection filed by the JD's or to grant any permission to JD's to lead evidence."

5. In view of the above, I find nothing wrong or perverse with the order passed by the Executing Court. Since the petitioner-JD has already preferred a civil suit for specific performance of agreement to sell, he could make a prayer for *ad interim* injunction in that very suit, if not already filed, which of course has to be decided on its own merits and in accordance with law. It is apparent that an attempt is being made simply to delay the fruits of decree lawfully passed which has attained finality. There is no merit in the instant petition and the same is dismissed.

February 4, 2015
rishu

(R.P. NAGRATH)
JUDGE