

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 54 of 2014 (O&M)

Date of Decision: March 3, 2015

Harsimranjit Singh

.....Appellant

Vs.

Sarabjit Singh and ors.

.....Respondents

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

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Present:- Mr. P.K. Gupta, Advocate
for the appellant.

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

Respondent No.1 Sarabjit Singh had obtained a decree of specific performance of agreement of sale dated March 11, 2002 against respondent No.2 Balwinder Kaur who had sold her share in the suit property to her son and daughter i.e. respondents No.3 and 4. The petitioner is a vendee who has purchased the property from respondents No.3 and 4 by registered sale deed. In order to resist the delivery of possession pursuant to the execution of decree for specific performance, he filed objections under Order 21 Rules 97 and 98 CPC before the Executing Court on August 3, 1999 which were dismissed. He opted to file a civil revision before this

Court which was disposed of on January 3, 2012 giving him liberty to file first appeal. His appeal having been dismissed, he has filed the present ESA against the dismissal of his objections.

Learned counsel for the appellant has vehemently contended that the appellant is a bonafide purchaser of the property which was subject matter of the litigation between the decree holder Sarabjit Singh and judgment-debtor Balwinder Kaur. He claims that the possession of the property cannot be delivered to the decree holder as Balwinder Kaur is shown to be owner of half share alongwith other co-sharers who are in joint possession of the property as per the revenue record. The possession of the appellant will be that of a co-sharer and he being joint owner in possession can be dispossessed only by adopting due procedure of law i.e. partition of the land as such he cannot be dispossessed by a decree of possession of specific performance obtained by respondent No.1-Sarabjit Singh. Counsel has also submitted that he is owner for valuable consideration protected by Section 41 of the Transfer of Property Act. It has been claimed that Balwinder Kaur herself being not in actual physical possession at the time of agreement of sale, could not have transferred the ownership and possessory rights to the decree holder.

I have heard learned counsel for the petitioner and carefully gone through the judgments passed by the Court below and considered the claim of the appellant who claims himself to be joint owner in possession in the property. The appellant has purchased the property in the year 2004.

The learned Executing Court has dismissed the objection petition of the appellant on the ground that the appellant purchased the share in the property during the pendency of the litigation from judgment debtor and thus is not entitled to obstruct the execution of the decree or to set up plea of bonafide purchaser in view of provision of Section 52 of the Transfer of Property Act by filing objection petition or by a separate suit. All the pleas raised have been considered. It is not necessary for adjudication of the objections to always frame issues. The decree of specific performance is not collusive between decree holder and judgment debtor as such it cannot be said that the rule of lis pendence is not applicable in this case. The exclusive possession of the judgment debtor or her vendees or the appellant is also not established, as such, the appellant cannot claim right to defeat the right of the decree holder. The benefit of Order 21 Rule 35 sub-Rule (2) CPC, of course is always available to a person who has a decree of joint possession of immoveable property.

The first Appellate Court has considered the claim of the objector- appellant and held in operative part of the order the possession has already been delivered to the decree holder with police help.

In view of the detailed cogent reasons given in the judgments passed by the Courts below, there is no ground for interference in the impugned order.

Dismissed.

March 3, 2015
sanjay

(M.M.S.BEDI)
JUDGE