

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1692 of 2016

Date of Decision:11.3.2016

Ravi

---Petitioner

vs.

Vinod Kumar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ashok Arora, Advocate
for the petitioner

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

Rekha Mittal, J.

The present petition has been directed against order dated 27.1.2016 (Annexure P-6) passed by the Civil Judge (Junior Division), Hisar, dismissing the objections preferred by the judgment debtor/petitioner. Further prayer has been made for setting aside order of even date (Annexure P-7) whereby the court has issued warrants for sale of house of the petitioner.

Vinod Kumar, respondent (decree holder) filed a suit for possession by way of specific performance of agreement to sell dated 7.2.2005 in respect of a residential house No. 47-A situated at Raja Ram Garden, Kaimari Road, Hisar and in the alternative, prayer for recovery of Rs. 80,000/- with interest was made. The suit was disposed of by the trial court vide judgment and decree dated 31.1.2012 and the respondent was allowed alternative relief of recovery of Rs. 40,000/- alongwith interest. Ravi and others filed an appeal against the judgment and decree passed by the trial court but the same was dismissed by the District Judge, Hisar vide judgment and decree dated 1.12.2012 and the decree of the trial court was affirmed.

Ravi, the present petitioner filed objections against the application for execution of the decree passed in favour of the respondent and the same were dismissed vide the impugned order (Annexure P-6) and the attached property was ordered to be put to auction for realization of the decretal amount.

Counsel for the petitioner, in line with the averments raised in the objections has submitted that Ravi and others, successors-in-interest of Sh. Hans Raj son of Sham Lal were sued through their uncle (Tau) Sh. Jagdish Chander son of Sham Lal when as a matter of fact, they were residing with their Bua Ms. Veero Bai wife of Ram Saran after unfortunate demise of their parents. Reena, defendant No. 3 after attaining the age of majority, has challenged the decree by way of civil suit and the same is pending in the Court of Additional Civil Judge (Senior Division), Hisar. Another submission made by counsel is that the petitioner is residing in the

house in question that was constructed with donations/contributions obtained from various persons of the colony and financial assistance given by Sh. Ranbir Gangwa MLA of Nalwa Constituency, therefore, the said house is not liable to be attached and sold in view of bar created under Section 60 of the Code of Civil Procedure (in short “CPC”).

I have heard counsel for the petitioner and perused the records but find no merit in the petition.

The Executing Court has noticed that there is no material on record to substantiate plea of the petitioner that he or other children of Sh. Hans Raj had been residing with their Bua namely Veero Bai wife of Ram Saran. Even otherwise, the petitioner has not raised any plea that Sh. Jagdish Chander, his paternal uncle (Tau) had any interest adverse to that of the minors. Vinod Kumar, respondent filed a suit for specific performance of the agreement but the trial court allowed alternative relief for recovery of earnest money. Sh. Jagdish Chander preferred an appeal to assail the judgment and decree passed by the trial court but came out to be unsuccessful. In this view of the matter, I find myself unable to accept submissions of the petitioner that he can resist execution of the decree that is based upon a liability created by Sh. Hans Raj, his father. Pendency of a suit filed by Ms. Reena, daughter of Sh. Hans Raj after attaining majority, cannot be taken as a ground to stall the execution proceedings unless stay is granted by the court against execution of the decree, challenged in the suit.

The petitioner has taken resort to Section 60(c) CPC on the premise that house in question is the only residential house with the petitioner. In the case at hand, liability qua the decretal amount was created

by Sh. Hans Raj, predecessor in interest of the petitioner. In reply to the objections particularly para 7, it was averred that the property in question has devolved upon the petitioner on death of Sh. Hans Raj. Counsel for the petitioner has not challenged that the property in question was not left behind by Sh. Hans Raj, father of the petitioner. As the decretal amount can be recovered only from the assets left behind by Sh. Hans Raj to whom the amount of earnest money was paid under the agreement, the petitioner cannot escape liability of attachment or sale of the house in question by taking recourse to the provisions of Section 60 CPC in the present scenario. Analyzed from any angle, contentions raised by the petitioner are devoid of merit, thus liable to be rejected.

For the foregoing reasons, the petition is dismissed in limine.

(Rekha Mittal)
Judge

11.3.2016
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