

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

CR No.2187 of 2015

Date of decision : 29.01.2016

Pankaj Kumar

...Petitioner

Versus

Jarnail Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. A.S. Salar, Advocate for respondent No.1

Mr. H.P.S. Ghuman, Advocate for respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioner-Decree Holder is aggrieved of the impugned order dated 25.07.2014 (Annexure P-6), whereby Executing Court has allowed the objections filed by the respondent No.2 who is stated to have purchased the property from person namely Gurjeet Singh, who had purchased it from Jarnail Singh, who is none else but the father, prior to the agreement to sell dated 23.11.2005.

Mr. Deepak Aggarwal, learned counsel appearing on behalf of petitioner-Decree Holder submits that vide judgment and decree dated

04.06.2011, the trial Court instead of granting the discretionary relief under Section 20 of the Specific Relief Act ordered for refund of earnest money of Rs.4 lacs along with interest at the rate of 12% p.a. from the date of execution of the agreement to sell dated 23.11.2005 till the decision and future interest at the rate of 6% p.a.. The decree was against the Jarnail Singh s/o Kirpal Singh original vendor of the agreement. The objections have been filed at the instance of respondent No.2 on the ground that he had purchased the property from son of Jarnail Singh, the Vendor. He submits that decree was not against the third party, in essence, there is no specific performance of the agreement to sell has been ordered. The money is owed by Jarnail Singh and not by Bhinder Singh, therefore, objection ex facie was not maintainable, thus, order under challenge suffers from grave illegality and perversity.

Mr. A.S. Salar, learned counsel appearing on behalf of respondent No.1-Vendor submits that prior to the agreement to sell dated 23.11.2005, Jarnail Singh had already sold the property to his son namely Gurjeet Singh who has further sold it to Qurishad Begum who further sold it to Bhinder Singh, therefore, judgment and decree aforementioned seriously prejudiced their rights.

Mr. H.P.S. Ghuman, learned counsel appearing on behalf of respondent No.2 Objector submits that since he has died, he prays for moving appropriate application. It is a settled law that estate of deceased person is always represented. Succession cannot remain in abeyance. Moreover, the execution was not against Bhinder Singh-third party as it was money decree. It is only Jarnail Singh who has to honour the judgment and

decree aforementioned.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to reproduce operative part of the decree, which reads thus:-

“This suit is coming before me (Shri Sham Lal, PCS, Additional Civil Judge (Senior Division), Nabha) on the 4th day of June, 2011 in the presence of Sh. Y.R. Mangla, Advocate for the plaintiff and Sh. Amar Chand, Advocate for the defendant. It is hereby ordered that the suit of the plaintiff for alternative relief of recovery of Rs.4,00,000/- succeeds and same is, hereby decreed with costs and interest @ 12% per annum from date of execution of agreement to sell dated 23.11.2005 till date of decision of suit and future interest @ 6% per annum on principal amount of Rs.4,00,000/- from date of decision of suit till its realization, whereas suit of the plaintiff for specific performance of the agreement to sell and permanent injunction fails and the same is hereby dismissed.”

The decree is against Jarnail Singh and not against Bhinder Singh. It does not envisage specific performance of the agreement to sell, thus, the title and interest of the Bhinder Singh is not effected. The execution was only with regard to the refund of earnest money alongwith interest aforementioned. In my view, the trial Court has exceeded its jurisdiction in accepting the objections on the premise that amount of Rs.4 lacs is/was to be paid by the present owner where the decree does not envisage such direction. Once the Jarnail Singh has not been held to execute the agreement to sell, Bhinder Singh right vis-a-vis his title is not effected.

Keeping in view, the aforementioned facts, order dated 25.07.2014 under challenge allowing the objection of Bhinder Singh, whose right has seriously not been effected, was not maintainable and order allowing the objections is hereby set aside and revision petition is allowed.

The petitioner shall be entitled to seek execution of the judgment and decree aforementioned against the Judgment Debtor Jarnail Singh only in accordance with law.

29.01.2016

pawan

**(AMIT RAWAL)
JUDGE**