

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 2765 of 2016
Date of Decision: 22.4.2016**

Vijay and another

---Petitioners

versus

Smt. Sunita Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Amit Kumar Jain, Advocate
for the petitioners**

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 lays challenge to order dated 3.2.2016 passed by the Additional Civil Judge (Senior Division), Narwana in execution No. 23/12.8.2014 whereby the Executing Court has dismissed the objections filed by the petitioners/judgment debtors.

The sole submission made by counsel for the petitioners is that as the respondent/decreed holder did not pray for a decree of possession while claiming specific performance of agreement to sell dated 14.8.2006 qua agricultural land measuring 30 kanals detailed in head note of the plaint and judgment of the trial court (Annexure P-2), order passed by the Executing Court in regard to issuance of warrant of possession cannot

be allowed to sustain and liable to be set aside. To substantiate his contention, it is urged that in the agreement to sell relied upon by the respondent/decreed holder, she has claimed that possession of the suit land was delivered at the time of agreement between the parties. Not only this, in the prayer clause detailed in para 12 of the plaint, she prayed for a decree of permanent injunction to restrain the defendants from forcibly harvesting the wheat crop allegedly sown by her in the land in question. Counsel would submit that in view of stand of the decree holder throughout the proceedings, she cannot assert for issuance of warrant for delivery of possession of the land in question. In support of his contention, he has referred to judgment of the Hon'ble Supreme Court of India **Adcon Electronics Private Limited vs. Daulat** 2002(1) R.C.R.(Civil) 806. Reference has also been made to judgment of this Court **Jeet Singh vs. Gursewak Singh and others** 2015(3) R.C.R.(Civil) 82 and judgment of the Bombay High Court **Purshottam S. Talreja and another vs. Coover Phiroze Bharucha and others** 2008(3) ICC 118.

I have heard counsel for the petitioners, perused the records but find no merit in the petition.

Be that as it may, the respondent/decreed holder filed a suit for possession by way of specific performance of agreement to sell dated 14.8.2006 in regard to the suit land. The learned trial court framed a specific issue with regard to entitlement of the respondent/plaintiff to a decree of possession by way of specific performance of the contract with its burden of proof placed upon the plaintiff/respondent. A relevant extract of Issue No. 3 framed by the trial court vide order dated 22.11.2007 reads as

follows:-

“Whether the plaintiff is entitled to decree of possession by way of specific performance of contract? OPP”

The said issue was answered in favour of the respondent while issues No. 1 to 3 were taken up together. On the basis of determination of the issues framed by the trial court, the trial court in the operative part of the judgment has held, reads thus:-

“.....the suit of the plaintiff succeeds and is hereby decreed with cost as prayed for. The defendants are under direction of the court to get the sale deed executed in pursuance of the agreement to sell dated 14.8.2006 within a period of two months from the passing of this judgment, failing which the plaintiff shall be entitled to get the sale deed executed through the process of the Court.”

It is an admitted position of the case that the judgment and decree passed by the trial court have been upheld upto Hon'ble the Supreme Court of India. Keeping in view that the trial court has decreed suit of the respondent/plaintiff for possession by way of specific performance of the agreement to sell, I find it difficult to differ with the findings of the Executing Court or to accept plea of the petitioners that either no decree for possession was passed in favour of the decree holder or she cannot press for issuance of warrant of possession in execution of the said decree. That being so, the petitioners cannot derive any advantage to their contentions from the judgments relied upon by counsel as in the

referred authorities, no claim for possession while seeking specific performance of an agreement to sell was either made or allowed by the court.

For the foregoing reasons, finding no merit, the petition is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

22.4.2016

PARAMJIT