

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2904 of 2016 (O&M)
Date of decision:16.09.2016

Dalel Singh and others

... Petitioners

Vs.

Madho Ram and another

... Respondents

CR No.2905 of 2016 (O&M)

Dalel Singh and others

... Petitioners

Vs.

Sadhu (since deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the petitioners (in both cases).

Mr. O.P.S.Tanwar, Advocate
for the respondent in CR No.2904 of 2016)
for LRs of respondent No.1 (in CR No.2905 of 2016).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions
bearing No.2904 and 2905 of 2016, impugning the order dated 11.03.2016.

C.M.No.18613-CII-2016 in CR No.2904 of 2016

The application is allowed, subject to all just exceptions. The
final sale-deed draft dated 21.04.2016 (Annexure R-3) is taken on record.

CR Nos.2904 and 2905 of 2016 (O&M)

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, Advocate appearing on behalf of the petitioners submits that Nasib Singh had entered into agreement to sell dated 10.07.1980 with Sadhu Singh and others in respect of land measuring 16 kanals.

During the currency of the agreement to sell, Nasib Singh had executed the sale deed dated 12.08.1980 in favour of the predecessor-in-interest of the petitioners. The earlier vendees, i.e., Sadhu Singh and others instituted a suit seeking specific performance of the agreement to sell dated 10.07.1980 which was dismissed by the trial Court on 07.12.1990. However, the Lower Appellate Court, vide judgment and decree dated 29.07.1993 decreed the suit by holding that since Nasib Singh was having more area after the sale and therefore, whatever the short fall in the sale deed would be re-cooked in favour of the petitioners. It is in this background of the matter, the order dated 12.09.2014 (Annexure P-2) was passed in the execution application by the Executing Court. He further submits that vide impugned order, the trial Court remained oblivious of the previous order and straightway ordered for appointment of Local Commissioner for the purpose of seeking execution of the judgment and decree dated 29.07.1993 and thus, urges this Court that order under challenge is not only perverse but also non-speaking.

Per contra, Mr. O.P.S.Tanwar, learned counsel appearing on behalf of the respondent/decreed holder submits that as per the documents

annexed with the application seeking vacation of stay, Nasib Singh is only left with the land measuring 5 kanals 12 marlas, as per the judgment and decree of the Lower Appellate Court, though as per the certificate obtained from Tehsildar, he has only 14 marlas of land and therefore, the petitioners are required to join for selling out their share for the purpose of satisfying the judgment and decree and therefore, the order dated 12.09.2014 has not been assailed and thus, urges this Court for affirming the findings under challenge.

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

For the sake of brevity, the order dated 12.09.2014 and as well as, the impugned order dated 11.03.2016 read thus:-

12.09.2014

“Today the case was fixed for filing draft sale deed on behalf of D.H. Draft sale deed has been filed. Shri Sanjeev Garg, Stenographer G.-II of this Court is appointed as Local Commissioner with the direction to execute the sale deed qua the land in question in favour of D.H on behalf of J.D. terms of decree dated 29.7.1993 passed by the Court of Sh. B.B.Parsoon, the then learned Additional District Judge Kurukshetra wherein it is specifically mentioned that plaintiff would make payment of the remaining sale consideration (Rs.34000/- less Rs.12,500/-, Rs.21,500/-) by 30.8.1993 and the defendant No.1 through his legal representatives would

execute the sale deed in terms of the agreement Ex.P1 in favour of appellant/plaintiff. If the agreement to sell Ex.P1 can survive independently and defendant No.1 through his legal representatives is still remaining to be owner of the share of the land, i.e., 320/6993 share, the defendant no.1 through his legal representatives would execute the sale deed in favour of the applicant/plaintiff. However, if he does not remain to be owner of such share any more than vendees/defendants No.2 to 6 would joint with the defendant No.1 through his legal representatives in the conveyance of the sale deed so as to pass on the title of share i.e. 320/6993 share in favour of plaintiff in terms of authority reported as Dalbir Singh vs. Kuljit Singh 1993(2) RRR (PB & HR). The sale deed of 640/6993 would survive it at all only if agreement in question Ex.P1 taking precedence is complied with by defendant no.1 through his legal representatives.

Though sale deed has been filed by the decree holder but the Sub Registrar Thanesar is directed to execute and register the sale deed in view of decree dated 29.7.193 passed by the Court of Sh. B.B.Parsoon, the then learned Additional District Judge Kurukshetra. Fees of Local Commissioner is assessed as Rs.4,000/- to be paid by D.H. Report of Local Commissioner be awaited for 27.10.2014.”

11.03.2016

“Report of Local Commissioner perused. As per report two drafted sale deeds have been placed on the Court file, one by decree holder and another by judgment debtor. The appeal filed by the judgment debtors has been dismissed upto Hon'ble Apex Court. After careful perusal of both the drafted sale deeds, it is observed that the drafted sale deed placed on record by decree holder seems to be more authenticated and fully satisfy the judgment and decree dated 29.7.1993. So, Local Commissioner is directed to execute and register the sale deed as per drafted sale deed placed on Court file by decree holder. Sub Registrar concerned is also directed to register the above said sale deed. Reports of Local Commissioner is awaited for 16.03.2016.”

On joint reading of the aforementioned orders, I am of the view that the Executing Court remained oblivious of the previous order with regard to determination of the share of Nasib Singh having left, after the sale deeds in favour of the petitioners or any other sale deeds. Had this exercise been done, perhaps the plaintiffs would have been given a chance to rebut the same and the conclusion would have been drawn as to how much area was in short fall and be recouped from the sale deeds of the petitioners or not.

Though Mr. Tanwar, vide application has brought to the notice of the Court the factum of final sale deed, but the same was not part and parcel of the record of the Courts below. Accordingly, I deem it appropriate

to direct the trial Court to pass order afresh after ascertaining the short fall in the land holding of Nasib Singh strictly in accordance with judgment and decree dated 29.07.1993 as well as, the order dated 12.09.2014 as per law, as expeditiously as possible preferably within a period of four months from the date of receipt of a certified copy of this order.

With the aforementioned observations, the impugned order is set aside and revision petitions stand disposed of.

The parties through their counsel are directed to appear before the trial Court on 18.10.2016.

(AMIT RAWAL)
JUDGE

September 16, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No