

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

**CR No.3545 of 2016(O&M)
Date of decision :20.05.2016**

Tara Handa

..... Petitioner

Versus

Amarjit Nangloo and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Puneet Sharma, Advocate
for the petitioner.

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

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 19.10.2015 passed by the learned Additional Civil Judge (Senior Division), S.A.S. Nagar, Mohali in Exe/0001612/2013, whereby on the basis of the objection petition filed by respondent no.1 Amarjit Nangloo, the execution petition filed by the petitioner has been dismissed.

2. The brief background giving arise to file the present revision petition is that respondents no.1 and 2 executed an agreement to sell dated 22.02.2008 in favour of the petitioner

for the sale of a plot measuring 10 Marlas for a sum of Rs. 15 lacs. It is alleged that Rs. 13 lacs were paid in cash as earnest money by the petitioner. Respondent no.1 filed a suit for mandatory injunction against respondents no.2 to 4 directing them to execute the sale deed in his favour in terms of the agreements to sell dated 24.06.2006 and 22.02.2008. The said suit was taken up before the Lok Adalat. On the basis of the compromise between the parties, the learned Presiding Officer/Civil Judge (Junior Division) Mohali, decreed the suit filed by respondent no.1 as per the compromise deed dated 17.12.2009 (Annexure P-2). The said compromise deed was made the part of the decree. In the said compromise, it was mentioned that respondent no.1 has sold the plot measuring 250 sq. yards to petitioner-Smt. Tara Handa. It was further mentioned that she can get executed the sale deed through Narinder Singh Bhatia-respondent no.2 as he is the nominee in the land sold by Amarjit Nangloo. The plots carved out by them were also numbered. Plot no.4 was allocated to the present petitioner. The possession of the said plot was to be handed over after proper measurement at the site. It was further mentioned that respondent no.1 would have no objection regarding execution and registration of the sale deed of the plots in favour of the petitioner and other purchasers through Narinder Singh Bhatia, his nominee/special power of attorney. Certain other terms and conditions were also settled

in the compromise dated 17.12.2009. On the basis of this compromise, the compromise decree dated 19.12.2009 was passed by the learned Civil Judge (Junior Division), Mohali. Thereafter, the present petitioner has filed the execution petition for the execution of the decree dated 19.12.2009 claiming that she has purchased plot no.4 measuring 250 sq. yards from respondent no.1 Amarjit Nangloo, the first party in the compromise and the sale deed is to be executed and got registered by Narinder Singh Bhatia-respondent no.2 and respondent no.1 would have no objection. Thus, she claimed herself to be the decree holder(hereinafter called 'DH') as the right had accrued to her in view of the judgment and decree dated 19.12.2009.

3. During the pendency of the said execution petition, two objection petitions were preferred. One execution petition was filed by Kartara Devi claiming herself to be the purchaser of the plot from the present petitioner. The second objection petition has been preferred by respondent no.1-Amarjit Nangloo, in whose favour decree dated 19.12.2009 was passed.

4. The aforesaid objection petitions were dealt with by the learned Executing Court vide impugned order dated 19.10.2015. The objection petition filed by Kartara Devi was dismissed. However, on the basis of the objection petition filed by respondent no.1, the execution petition filed by the

petitioner was dismissed as she was neither a DH nor the decree had been transferred or assigned to her and she cannot file the execution petition.

5. Aggrieved with the aforesaid order, the present revision petition has been preferred.

6. I have heard Mr. Puneet Sharma, Advocate, learned counsel for the petitioner and have meticulously gone through the paper book.

7. Initiating the arguments, learned counsel for the petitioner contended that the petitioner will also fall in the definition of the DH as provided under Section 2 (3) of the Code of Civil Procedure, 1908 (for short CPC). He contended that in the compromise deed dated 17.12.2009 on the basis of which the decree dated 19.12.2009 has been passed, it has been categorically mentioned that the sale deed is to be executed with respect to the plot no.4 measuring 250 sq. yards in favour of the petitioner. The agreement to sell was executed in favour of the petitioner by respondents no.1 and 2 on 22.02.2008. The suit has been filed by respondent no.1 on 16.07.2009. Thus, he contended that the rights were already conferred upon the petitioner. The petitioner is the beneficiary of the decree dated 19.12.2009. So, the execution petition on her behalf is maintainable. To support his contentions, he relied upon cases **Kultar Singh and Ors. Vs. Smt. Nimbo and Ors. 1988(2) R.R.R 539, Mohan Lal Vs. Smt. Asha Rani**

and ors. 2013(1) Law Herald 108, Bhoop Alleged son of Sheo Vs. Matadin Bharadwaj 1991(2) SCC 128 and Sri Narain Vs. Ehsan Ellahi 1951 AIR (Punjab) 324.

8. I have duly considered the aforesaid contentions.

9. There is no dispute that there was agreement to sell between respondent no.1 Amarjit Nangloo and respondent no.2 on one hand with present petitioner Tara Handa on the other hand, for the sale of plot measuring 10 Marlas for a sum of Rs. 15 lacs. Respondent no.1 has filed the suit against respondents no.2 to 4 for mandatory injunction directing them to execute the sale deed in his favour in terms of agreements to sell dated 24.06.2006 and 22.02.2008 as the full consideration has already been received by them. The present petitioner was not party to the said suit. In the said suit, a compromise has taken place between the respondents vide compromise settlement dated 17.12.2009 and on the basis of that the decree dated 19.12.2009 was passed by the learned Civil Judge in favour of respondent no.1 and against respondents no.2 to 4. The present petitioner has filed the present execution petition claiming herself also to be a DH.

10. The DH has been defined in Section 2 sub-section 3 of CPC, which reads as under:-

“(3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made;”

11. As per the aforesaid Section, the DH is the person in

whose favour the decree has been passed or an order capable of execution has been made. It is an admitted fact that the present petitioner was not a party to the civil suit no.213 of 16.07.2009 filed by respondent no.1 against respondents no.2 to 4. She was also not party to the compromise dated 17.12.2009. The decree dated 19.12.2009 was passed in favour of respondent no.1 and against respondents no.2 to 4. It is also not the case of the petitioner that the decree dated 19.12.2009 was transferred or assigned to her by respondent no.1. So, taking the case from any angle, the petitioner does not fall in the definition of the DH. So, she cannot seek the execution of the decree dated 19.12.2009.

12. Cases relied upon by learned counsel for the petitioner are quite distinguishable of facts. In **Kultar Singh's case (Supra)**, the rights were transferred in favour of the petitioner by virtue of the decree dated 05.03.1987. In **Mohan Lal's case (Supra)** also there was the transferee of the decree and this Court has laid down that the transferee of decree steps into the shoes of the original DH. In **Bhoop's case (Supra)**, the pre-emption decree was passed by the learned trial Court in favour of Shanti Devi. She executed deed of assignment of the said decree in favour of respondent Matadin. So, in that case also there was assignment of the decree on the basis of written deed of assignment. In **Siri Narain's case (Supra)** also there was purchase of preliminary

decree. So, in all the cases referred by learned counsel for the petitioner, there was transfer/assignment of the decree.

13. As per Order 21 Rule 16 CPC, where the interest of the DH in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which it passed. But, in the instant case, as already discussed, there is no transfer or assignment of the interest of the DH-Amarjit Nangloo in favour of the petitioner. So, she cannot claim herself to be a DH or to have stepped into the shoes of the DH. As the decree dated 19.12.2009 has not been passed in her favour nor she is the transferee or assignee of the said decree, so, she has no right to execute that decree.

14. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the well reasoned impugned order passed by the learned trial Court, which does not call for any interference by this Court.

15. Thus, the present revision petition having no merits, is hereby dismissed.

20.05.2016

S.khan

(DARSHAN SINGH)
JUDGE