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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3609-2014

Date of Decision : May 27th, 2016

Satnam Singh

.... Petitioner

Versus

Jasvir Kaur and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. S.S.Rangi, Advocate,
for the petitioner.

Mr. Sham Lal Bhalla,
for respondent Nos. 1 and 2.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 5.10.2013 passed by Additional Civil Judge [Senior Division] Fatehgarh Sahib, whereby application dated 15.02.2012 filed by the Decree Holder [DH] for issuance of directions to the Tehsildar to restore the original possession of the suit property by ignoring partition as well as mutation was declined.

2. Learned counsel for the petitioner submitted that suit for specific performance of agreement of sale dated 27.07.1999 was filed. The said suit was decreed vide judgment and decree dated 13.1.2009. Appeal was dismissed by Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 25.08.2009 and the respondents filed RSA No. 4465 of 2010

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and RSA No. 5042 of 2010 and the same have already been dismissed *in limine* vide judgment and decree dated 25.08.2009 and as such, judgment and decree dated 13.1.2009 for specific performance of agreement has already become final. Petitioner had filed Execution Application bearing No.23 dated 19.09.2009 and during the pendency of the execution proceedings, the sale deed in compliance of judgment and decree dated 13.1.2009 was executed and registered through the agency of the Court and thereafter warrants of possession of the suit land were issued for 28.1.2012. The said warrants were received back unexecuted with the report that partition proceedings of the land have been effected. As such, application dated 15.02.2012 [Annexure P/1] was filed and the said application was dismissed by the Court below vide impugned order dated 5.10.2013.

3. Learned counsel for the petitioner further submitted that as per provisions of Section 47 of the Code of Civil Procedure, 1908 [for short, "CPC"], all questions arising between the parties to the suit in which the decree was passed are to be determined by the Executing Court and not by a separate suit, but the Court below has dismissed the said application with the observation that the petitioner may approach the Civil court for annulment of the partition and the said order be set-aside and the application of the petitioner be accepted. On this point, reliance has been placed upon a decision of Hon`ble Supreme Court in **R.P.A. Vallimmal Vs. R. Palanichami Nadar**, 1997(2) RCR [Civil] 679.

4. Learned counsel for the respondents submitted that the partition proceedings have already been finalized and the Court below has rightly taken the view that the petitioner should approach the Civil Court for

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annulment of the partition and the present petition is liable to be dismissed.

5 Having considered the submissions made by learned counsel for the parties and having gone through the judgment relied upon by learned counsel for the petitioner in the case of **R.P.A. Vallimmal's [supra]**, this Court is of the considered view that the facts of the case in hand are entirely distinguishable with the case cited by learned counsel for the petitioner because in a suit for specific performance, sale deed has already been executed in favour of the Decree Holder, but the warrants remained unexecuted because the suit property had already been partitioned by the competent authority. The Court below observed that the proper remedy for the petitioner is to challenge the partition proceedings separately. More so, in the case in hand, the Court below has already observed that warrant of possession qua part of the land i.e., measuring 1 Kanal 7 Marlas can be executed which is in the possession of Jasvir Kaur and for that purpose, warrant of possession has already been ordered to be issued by the Court below.

6. Undisputedly, as per provisions of Section 47 and Order XXI Rule 64 CPC, the Executing Court is empowered to decide all the questions including title. On the basis of agreement of sale, the plaintiff was to acquire and get the land transferred in respect of the share of the land which was purchased by way of agreement of sale and the sale deed was to be executed to that extent. It is for the Executing Court to decide the claim of the parties as to whether the petitioner got the sale deed executed to the extent of his share or to the extent of land measuring 1 Kanal 7 Marlas for which the Executing Court has already ordered for issuance of warrants of possession.

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Resultantly, the impugned order is set-aside with the direction to the Executing Court to look into all these aspects and decide the matter afresh. With these observations, the revision petition stands allowed.

(SHEKHER DHAWAN)
JUDGE

May 27th, 2016
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