

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

CR No.4439 of 2016(O&M)

Date of decision:15.7.2016

Gurnahar Singh

....Petitioner

VERSUS

Gian Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL, J.

The present petition has been directed against order dated 25.04.2016 passed by the Civil Judge (Junior Division), Patiala, dismissing the objections filed by the petitioner in execution of the decree dated 11.09.2007.

Gian Singh son of Jangir Singh filed a suit for specific performance of agreement dated 24.11.2000 in respect of a house situated at Lehal, Tehsil and District Patiala, detailed in head-note of the plaint (Annexure P-3). Further relief qua mandatory injunction directing the defendants to deliver possession of remaining half portion of the said house and for permanent injunction restraining Kanwaljit Kaur - defendant No.2 from alienating, mortgaging, leasing out the said house was claimed. The suit was decreed by the trial Court vide judgment and decree dated 11.09.2007 passed by the Civil Judge (Senior Division), Patiala. The appeal preferred by the unsuccessful defendants was disallowed vide judgment and decree dated 25.02.2012 passed by the Additional District

Judge, Patiala. As a matter of fact, the subsequent appeals filed by the defendants/appellants came out to be unsuccessful up to Hon'ble the Supreme Court of India.

Gurnahar Singh, the judgment debtor (appellant herein), filed an objection petition against execution of the decree dated 11.09.2007 and the same was dismissed by the executing Court on 25.04.2016 vide order impugned in the present petition.

The sole submission made by counsel for the petitioner is that as the decree holder sought possession of half portion of the house in question by claiming relief of mandatory injunction, the decree holder is not entitled to seek possession of the entire house measuring 168 square yards in execution of the decree dated 11.09.2007, modified by the first Appellate Court vide judgment and decree dated 25.02.2012, later affirmed up to Hon'ble the Supreme Court of India.

I have heard counsel for the petitioner, perused the paper-book and various annexures appended with the petition.

Before advertng to submissions made by counsel for the petitioner, a brief reference to operative part of the decree passed by the trial Court and allegedly modified by the first Appellate Court is pertinent. A relevant extract from the decree passed by the trial Court reads as follows:-

“.....It is hereby ordered that the suit of the plaintiff is decreed with costs and decree for possession of the house more fully detailed and described in the heading of the plaint, by way of specific performance of the agreement dated 24.11.2000 is hereby passed in favour of the plaintiff and against the defendant.....”

The decree passed by the first Appellate Court, germane to the controversy, reads thus:-

“.....The findings returned by the lower court stands affirmed with a slight modification that appellants/defendant no.1 will execute the sale deed in favour of the plaintiff in accordance with terms and conditions of the agreement to sell dated 24.11.2000 upon receiving the balance sale consideration and defendant No.2 Kanwaljit Kaur will join in this act so that the title of the sale deed dated 4.9.2003 executed by defendant No.1 in her favour during the pendency of the suit is re-vested in favour of the plaintiff. The sale deed dated 4.9.2003 is ordered to be set aside because it is hit by the doctrine of lispendense.”

A plain and casual reading of the decree passed by the learned trial Court particularly the aforesaid extract would make it evident that a decree for possession of the house that was detailed and described in the heading of the plaint was passed in favour of the decree holder by way of specific performance of the agreement dated 24.11.2000. There is nothing on record suggestive of the fact that the decree passed by the trial Court for possession of the entire house, was ever modified or reversed. To say it differently, the decree passed by the trial Court for possession of the house, detailed in head-note of the plaint, has been affirmed up to Hon'ble the Supreme Court. It is not plea of the petitioner that the decree holder seeks to recover possession of anything more than a house measuring 168 square yards, subject matter of the suit, by way of execution. Under these circumstances, the petitioner cannot derive any advantage to his contention from the fact that the decree holder claimed mandatory injunction qua half portion of the house in question, with an intent to frustrate and delay execution of the decree, the benefit whereof has fructified after a prolonged legal battle fought up to the highest Court of this country.

In view of the above, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

No order as to costs.

JULY 15, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE