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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5180-2013

Date of decision : 14.07.2016

Parkash Chand

... Petitioner

Versus

Harbans Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.K. Aurora, Advocate
for the petitioner.

Mr. Sanjay Gupta, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioner-judgment debtor is aggrieved of the impugned order dated 05.09.2012, whereby the objections qua execution of the judgment and decree dated 04.11.1996, have been dismissed.

Mr. H.K. Aurora, learned counsel for the petitioner submits that as per the compromise, decree aforementioned, was passed. The possession had already been exchanged and only the petitioner-judgment debtor had to execute the sale deed. The execution application has been filed in 2007 i.e. after eleven years. The decree has not been executed as per the site plan (Ex.C-2). It is matter of record that the petitioner was in possession of khasra No.14/R/2 and No.14//3, but was not the owner of khasra No.14/8

and 9/8. All these facts have not been noticed by the trial Court, even the statement of Harbans has been overlooked. The execution is not in consonance with the compromise. The petitioner was an illiterate person and the compromise was done by fraud and misrepresentation and thus, urges this Court for setting aside of the impugned order, under challenge and restoration of the possession.

Mr. Sanjay Gupta, learned counsel for the respondents submits that the conduct of the petitioner had not been fair and honest as he feigned ignorance about the compromise. The execution was within the period of limitation and cause of action arose when the petitioner failed to honour the same. The parties have not exchanged the possession. The possession was to be taken only at the time when the sale deed was allegedly executed. The word 'exchanged possession' should not be read to conclude that the possession had already been effected, only formalities were required to be done. In this regard, he has drawn the attention of this Court to the paragraph Nos.3 to 6 of the compromise which reads thus:-

“3. That the respectable of the village have got compromised between the parties and have modified the area of Kh. Nos.14/8(3-2) and 9/8(1-2), 14/2(1-16), 14/3(3-8) situated in village Khewal Tehsil and District Hoshiarpur. Now, according to the compromise, the party No.1 has (word “been”) missing) given 12 karms x 68 karms towards the eastern side touching to the property of watna from Tanda Road upto 68 Karms and party No.2 has been given 15 karms front upto 68 karms touching towards the eastern side of the

property of Baljit Singh South Tanda Road North property of Parkash and others of Kh. Nos.14/2, 14/3, 14/8 and 9/8 situated in village Kheowal, Tehsil and District Hoshiarpur.

4. *That both the parties have exchanged possession of the said land and now party No.1 will bound to execute the sale of the land measuring 5 kanals 9 marals out of kh. No.14/8, 9/8, 14/2 and 3 situated in village Kheowal Tehsil and District Hoshiarpur. Party No.1 admit the possession of the party no.2 and the part No.2 can get the girdawari transferred to his name according to the compromise and in the similar manner, the party No.1 will also entitled to get the girdawari changed of 4 kanals – 8 marals.*

5. *That there is one kila given by the party No.1 to party No.2 behind these four kilas. If there is any excess area in possession of party No.2 one kila, the excess area will be return by party No.2 to party No.1 in the aforesaid four khasra numbers.*

6. *That both the parties shall bound by the aforesaid compromise. The compromise has been written in order to avoid conflict between the parties and both the parties undertaken to abide by the same. If any party resiled from the compromise, the other party will be entitled to recover ₹ 20,000/- as compensation. This compromise is executed on this **10th day of October 1996** at Hoshiarpur in the presence of witnesses”.*

And thus, urges this Court prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the revision petition, for, the conduct of the petitioner had not been fair and honest and his approach had also not been *bona fide*. He deposed that he is an illiterate and the compromise (Ex.C-1) was not ever read over to him. No application till the filing of the execution had been moved for the correction or recalling of the order or decree. He admitted that he was not the owner of the khasra No.14/8, but deposed that his house was in khasra No.14/3/8. Though, khasra No.14/8 is not in ownership, therefore, he could not have raised construction on the aforementioned khasra number. The compromise had not been honoured and respected. Decrees of the trial Court are to be honoured and respected. The trial Court had framed the issues and given ample opportunities to the petitioner to belie the report of the Patwari regarding possession, but no contrary/corroborative evidence has been led to belie the report/compromise.

For the foregoing reasons, I do not find any illegality and perversity in the order under challenge and accordingly, the revision petition is dismissed.

14.07.2016
yogesh

(AMIT RAWAL)
JUDGE