

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

**CRM-M-8496 of 2010
DECIDED ON: MARCH 01, 2016**

PURAN MAL

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Yadav, Advocate
 for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana

Mr. Sanjay Mittal, Advocate
for respondents No.2 to 5.

JASPAL SINGH, J

Instant petition has been preferred by Puran Mal under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') seeking quashing of impugned order dated July 25, 2009 (Annexure P-5) passed by learned Additional Sessions Judge, Narnaul vide which order dated September 17, 2008 (Annexure P-4) passed by learned Sub Divisional Magistrate was set aside whereby during proceedings initiated under Section 145 Cr.P.C., the possession of the disputed property was ordered to be handed over to him (petitioner).

2. Undisputed facts are that the petitioner entered into an agreement of sale dated April 30, 1987 with the father of Siri Ram, namely Rampat for the

purchase of land measuring 8 kanals comprised in khewat No. 105, Khatauni No. 131 to 133, Mustil and Killa No. 20/14/2 (5-17), 19/21/1 (1-0), 22/1/1 (0-13) situated in the revenue estate of Village Rajpura, Tehsil Narnaul, District Mohindergarh, for a sum of ₹25,000/- on payment of ₹12,000/- as an earnest money out of total sale consideration. Since, the private respondents did not execute the sale deed as per terms and conditions of the agreement of sale dated April 30, 1987, petitioner was constrained to file a civil suit for specific performance of agreement of sale dated April 30, 1987 and that suit was decreed on May 15, 1991. Thereafter, in execution No. 130 dated December 23, 1999 captioned as ***Puran Mal v. Ram Chander and others*** while dismissing the objections preferred by respondent No.2 directed the execution of sale deed in compliance of decree for specific performance and on the basis thereof, sale deed No. 1393 dated November 23, 2007 was registered in favour of petitioner. Since, the possession of the property measuring 8 kanals, subject matter of the afore-said sale deed was with the receiver on account of pendency of proceedings under Section 145 Cr.P.C., possession thereof, was ordered to be handed over to the petitioner by learned Sub Divisional Magistrate. Feeling aggrieved qua order dated September 17, 2008 passed by learned Sub Divisional Magistrate, the private respondents preferred a revision petition in the Court of learned Additional Sessions Judge, Narnaul. While accepting that revision petition, the order dated September 17, 2008 passed learned Sub Divisional Magistrate was set aside.

3. The contention of learned counsel for the petitioner is that in view of admitted fact with regard to the execution of sale deed dated November 23, 2007. During execution proceedings in favour of the petitioner, petitioner has

become an absolute owner of the property in suit. Since, the possession of the property, subject matter of the above-said sale deed, was with the receiver due to pendency of proceedings initiated under Section 145 Cr.P.C., petitioner moved an application before the learned Sub Divisional Magistrate for delivery of possession to him, which was allowed by learned Sub Divisional Magistrate vide order dated September 17, 2008 (Annexure P-4) but that order has been set aside on frivolous ground by learned Additional Sessions Judge, Narnaul without assigning any cogent reason and is result of gross mis-reading of evidence as well as relevant provisions of the Code of Criminal Procedure.

4. On the other hand learned counsel for respondents have submitted that since the proceedings for partition of the land are pending before the revenue court(s), petitioner cannot be delivered the possession by Sub Divisional Magistrate even in view of the fact that sale deed has been got executed by executing court in his favour on behalf of private respondents. The possession can be sought by them only by way of partition.

5. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the various documents available on file, this Court is of the considered view that impugned order dated July 25, 2009 (Annexure P-5) passed by learned Additional Sessions Judge, Narnaul is not sustainable in the eyes of law being against law and settled facts. Undoubtedly, petitioner is the owner of property in suit. Since there was dispute in the year 1987 with regard to the possession of the land measuring 8 kanals. The possession thereof, was taken by the receiver. Since, 1987 petitioner who is the owner of property in dispute is out of possession and being owner he is entitled not only to the possession but also to the means profit

having acquired by the receiver. During the period the possession of the land remained with him and that too, after deducting the amount incurred. No cogent reason has been assigned by learned Additional Sessions Judge, Narnaul while setting aside a well reasoned order which otherwise based upon the civil court decree and the registered sale deed. As per the contents of the decree the property in suit is not joint with any person and as such cannot be a subject matter of any partition proceedings. Rather, the father of respondent No.2 was an absolute owner and entered into an agreement of sale specifically incorporating khasra numbers and the area in the agreement of sale which ultimately culminating in the decree for specific performance on the basis of which the sale deed was got executed by the executing court. The pendency of any criminal proceedings have nothing to do with the controversy in the instant petition. Rather the filing of revision petition before learned Additional Sessions Judge is/was absolutely unwarranted as neither the private respondents have left with any *locus standi* nor got have any right in the disputed property.

6. In the light of what has been discussed above, impugned order dated July 25, 2009 (Annexure P-5) being not sustainable in the eyes of law is set aside by way of acceptance of instant petition and order dated September 17, 2008 (Annexure P-4) passed by learned Sub Divisional Magistrate, Narnaul has been restored. The learned Sub Divisional Magistrate, Narnaul is directed to implement the order by delivering of possession of the land in question to the petitioner within a period of two months from the date of receipt of certified copy of this order.

MARCH 01, 2016
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(JASPAL SINGH)
JUDGE