

ESA-14-2016

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

ESA-14-2016

Date of decision : 15.02.2016

Smt.Tripta Rani

... Petitioner

Versus

Gurcharan Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Malkeet Singh, Advocate
for the petitioner.

REKHA MITTAL. J.

The present appeal lays challenge to orders dated 17.02.2014 passed by the executing Court dismissing the objections preferred by the petitioner and dated 19.09.2015 passed by the Additional District Judge, Amritsar, dismissing the appeal filed by the appellant against the order dated 17.02.2014 passed by the executing Court.

Counsel would contend that Kuldeep Kaur, one of the legal heirs of decree holder Gurcharan Singh had initiated execution proceedings and she passed away during pendency of the proceedings and her legal heirs were brought on record. Smt.Surinder Kaur, an attorney of Kuldeep Kaur daughter of Gurcharan Singh executed an agreement to sell dated 04.11.2011 in favour of the petitioner for transfer of the plot for consideration of ₹15,50,000/-, received a sum of ₹2,50,000/- as earnest

money and another sum of ₹2,50,000/- was agreed to be paid on 10.11.2011 and target date for execution of sale deed was fixed as 04.01.2012. Smt.Surinder Kaur failed to discharge her obligation and a dispute arose between her and the petitioner. Dalip Singh son of Smt.Kuldeep Kaur visited India on 03.11.2011, executed an agreement to sell in favour of the petitioner on behalf of legal heirs of Gurcahran Singh decree holder for a sum of ₹15,50,000/- and received ₹6,50,000/- as earnest money. It is further argued that as the petitioner is a purchaser under the agreement to sell executed by Dalip Singh son of Smt.Kuldeep Kaur, the right and interest of the petitioner in the suit property is liable to be adjudicated upon by the executing Court after framing of issues and providing her an opportunity to adduce evidence. It is further argued that the courts below have committed a serious error rather illegality in dismissing the objection petition in a haste without providing her an appropriate opportunity to prove her case.

I have heard counsel for the petitioner and perused the case.

The petitioner earlier preferred an objection petition on 18.03.2006 alleging that Karnail Singh had sold one house to her through Jaspal Singh vide sale deed dated 19.10.2004 and she is a bonafide purchaser for valuable consideration. On receipt of reply from the decree holder, the issues were framed and the petitioner failed to adduce any evidence despite many opportunities granted for the purpose and finally vide order dated 04.03.2011, she was proceeded against ex-parte. She

filed another objection petition dated 06.12.2011 on the plea that Dalip Singh son of Ms.Kuldeep Kaur daughter of decree holder Gurcharan Singh has executed an agreement to sell dated 03.12.2011. The Courts below have rightly held that any agreement to sell or sale deed propounded by the petitioner during pendency of the execution proceedings would be hit by doctrine of lis pendens. It has further been held that if any such agreement dated 03.12.2011 has been executed in her favour by one Dalip Singh, the petitioner would be at liberty to file a separate suit in accordance with law seeking specific performance of the said agreement. The very fact that the petitioner has set up different documents at different stages of execution proceedings would indicate that the petitioner wants to stall progress of execution proceedings on one pretext or the other. As the petitioner is claiming right in the suit property on the basis of an agreement purportedly came into existence after passing of the decree rather during pendency of execution proceedings, no error much less illegality can be found in the orders passed by the Courts below as would call for intervention.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed in limine.

(REKHA MITTAL)
JUDGE

February 15, 2016.
Davinder Kumar