

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

**ESA No.16 of 2016 (O&M)
Decided on: 15.07.2016**

Jagjit Singh

....Appellant

Versus

Mohinder Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Aalok Jagga, Advocate
for the appellant.

- 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?*

REKHA MITTAL, J.

CM No.3250-C-2016

Allowed as prayed for.

Documents Annexures A-6 and A-7 are taken on record
subject to just exceptions.

ESA No.16 of 2016 (O&M)

The present appeal lays challenge to orders dated 21.08.2015 passed by the Civil Judge (Jr. Division), Ludhiana in execution No.29 dated 18.07.2005 dismissing objections filed by the appellant and dated 03.12.2015 passed by the Additional District Judge, Ludhiana whereby the appeal preferred by the appellant against order dated 21.08.2015 has been dismissed.

Counsel for the appellant has submitted that Mohinder Singh – respondent filed a suit for possession by way of specific

performance of an agreement to sell dated 06.01.1992 in respect of property measuring 225 sq. yds., detailed in the decree-sheet against Tarsem Singh and Chander Mohan and was decreed vide judgment and decree dated 28.04.1999. As per the decree, the successful plaintiff (decree-holder) was directed to make payment of balance sale consideration of Rs.1,25,000/- to the defendant in fifteen monthly installments of Rs.8,000/- per month each and last installment of Rs.13,000/- on 22nd of every month against proper receipt issued by the defendant, with a further stipulation that if the plaintiff failed to make payment of any two installments, the whole amount would be liable to be forfeited by the defendants. It is further submitted that in pursuance of the aforesaid decree, respondent paid two installments on 22.05.1999 and 20.06.1999 and thereafter, failed to discharge his obligation in pursuance of the decree passed in his favour. After satisfying that the respondent did not comply with the terms and conditions of the decree of specific performance passed in his favour, the present appellant being a *bona fide* purchaser for consideration purchased a part of the property measuring 115 sq. yds. on 02.02.2000 and mutation was sanctioned in his favour. It is further submitted that the appellant is in continuous possession of property purchased by him but the said fact was not disclosed by Mohinder Singh.

Counsel would further argue that the judgment-debtor – Tarsem Singh filed a suit for possession of plot measuring 110 sq. yds. along with declaration that the conditional decree dated 28.04.1999 passed in Civil Suit No.283 on 06.05.1994 is not executable by defendant No.1 (Mohinder Singh) as he has not complied with the

conditions of the decree dated 28.04.1999. The suit was dismissed by the trial Court vide judgment and decree dated 25.10.2013. Tarsem Singh preferred an appeal against the judgment and decree dated 25.10.2013. Though, the appeal filed by Tarsem Singh was ordered to be dismissed but he was left at liberty to file proper objection/application in the Executing Court where the execution to execute the decree dated 28.04.1999 is pending or decided. According to counsel, Tarsem Singh, prior to decision of the appeal vide judgment and decree dated 04.01.2016 (Annexure A-6), preferred an objection petition on the plea that the judgment and decree dated 28.04.1999 is not executable and the receipts with regard to payment of balance sale consideration are forged one. The said objection petition was dismissed by the Executing Court primarily on the basis of findings recorded in the judgment and decree dated 25.10.2013 whereby Civil Suit No.292 of 22.08.2005 filed by Sh. Tarsem Singh against Mohinder Singh and others was dismissed by the trial Court. It is argued with vehemence that as the Appellate Court vide judgment dated 04.01.2016 (Annexure A-6) has categorically held that suit filed by Sh. Tarsem Singh to challenge executability of the decree dated 28.04.1999 is not maintainable in view of the bar created by Section 47 and under Order 21 Rules 98 and 101 CPC, any findings recorded by the trial Court in the suit filed by Tarsem Singh cannot form the basis for dismissal of the objection petition preferred by the JD and thus, the order passed by the Executing Court dismissing the objection petition of the JD is rendered without jurisdiction and cannot create an obstacle in the way of the present appellant to seek adjudication of his objection petition on merits

after framing of issues and permitting the parties to adduce evidence. It is prayed that the orders passed by the Courts below may be set-aside and the matter be remitted to the Executing Court for decision afresh, in accordance with law. In support of his contentions, he has referred to judgment of Hon'ble the Apex Court "***Asha and others vs United India Insurance Company Limited and another***", 2004(1) PLR 1. Further reliance has been placed upon "***Tamilnadu Mercantile Bank Shareholders Welfare Association vs S.C. Sekar and others***", 2009(2) SCC 784, "***Pipri Chinchwad New Town Development Authority vs Diwakar Gopal Khare and others***", 2014(13) SCC 587. Reference has also been made to judgment of this Court "***Baldev Singh vs Gram Panchayat, Village Dudhal***", 2003(3) RCR (Civil) 460 and of the Delhi High Court "***Mohd. Farjam vs Sarfaraz Ahmed***", 2012(191) DLR 247.

I have heard counsel for the appellant, perused the paperbook and various annexures.

Indisputably, suit filed by the respondent – Mohinder Singh for possession by way of specific performance of agreement of the year 1992 was decreed on 28.04.1999. The present appellant purported to have purchased a part of the suit property, after the decree dated 28.04.1999 was passed. Tarsem Singh, the judgment-debtor filed an independent suit for possession in respect of 110 sq. yds of area but failed both before the trial Court as well as the Court of appeal. The objection petition preferred by Tarsem Singh (JD) that either the decree is not executable or the receipts produced by the decree-holder acknowledging payment of balance sale consideration are forged was

dismissed. It appears that Tarsem Singh has not challenged the order whereby his objection petition was ordered to be dismissed.

The plea of the appellant that the order dismissing objection petition preferred by Tarsem Singh is without jurisdiction, is highly mis-conceived and liable to be rejected. The order passed by the Executing Court dismissing objections of Tarsem Singh (JD) is not a part of record. Even otherwise, assuming that the objection petition filed by Tarsem Singh was dismissed on the basis of findings recorded by the Civil Court in suit "*Tarsem Singh vs Mohinder Singh and others*" and the Appellate Court while disposing of the appeal against the judgment and decree passed in the said suit has held that a separate suit was not maintainable, it neither renders the order dismissing the objection petition of Tarsem Singh as infructuous nor takes away jurisdiction of the said Court to decide the objection petition. As per the settled position in law, a wrong or illegal order passed by a competent Court of law is equally binding upon the parties unless set-aside in appropriate proceedings.

In view of the above, the appellant cannot derive any advantage to his contentions from the referred authorities.

As the order passed by the Executing Court dismissing the objection petition preferred by Tarsem Singh has attained finality, the appellant cannot claim any independent right to agitate the same issues by filing an objection petition. In this view of the matter, I find myself unable to accept contentions of the appellant that the orders passed by the Courts below are liable to be set-aside much less to remit the matter to the Executing Court for decision afresh after framing of issues and

adducing evidence by the parties.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed *in limine*.

15.07.2016
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(REKHA MITTAL)
JUDGE