

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

ESA No.28 of 2016(O&M)

Date of decision:27.4.2016

Rakesh Kumar

....Appellant

VERSUS

Kusum Kalra and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Karan Singh, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against order dated 23.12.2015 (Annexure P-7) passed by the Civil Judge (Junior Division), Jagadhari, dismissing the third party objections filed by the appellant. Further prayer has been made for setting aside order dated 29.03.2016 passed by the executing Court vide which warrant of possession has been issued in favour of the decree holder and police help has been provided.

Kusum Kalra @ Kusum Lata filed an application for eviction of respondents No.2 and 3 under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 from the house detailed in headnote of the application (Annexure P-1). The application was allowed and the judgment dated 01.02.2013 passed by the Rent Controller, Yamunanagar at Jagadhari has attained finality.

Counsel for the appellant would contend that the executing Court dismissed the petition without framing issues and providing him an opportunity to prove that agreement to sell dated 22.02.2013 was executed in his favour by the decree holder/landlady for a sale consideration of Rs.8,00,000/-, out of which an amount of Rs.7,50,000/- was received towards earnest money on the date of agreement to sell. It is further argued that as the appellant is in possession of the suit house under a valid agreement to sell executed in his favour by Kusum Kalra @ Kusum Lata, he has a right to protect his possession against dispossession in execution of warrant of possession issued by the executing Court.

I have heard counsel for the appellant, perused the paper-book particularly the order impugned.

The executing Court has noticed that the objector (appellant herein) filed a suit for specific performance on the basis of agreement to sell in question and the said suit has been dismissed vide judgment and decree dated 09.11.2015 by the Civil Judge (Junior Division), Jagadhari. The appeal preferred by the objector against the judgment and decree passed by the trial Court has also been dismissed by the Additional District Judge, Jagadhari. Counsel for the appellant is fair enough to inform the Court that till date, the appellant has not preferred a Regular Second Appeal before this Court against the judgment passed by the Additional District Judge, Jagadhari. Once the appellant has already availed adequate opportunity before a Civil Court to prove his claim on the basis of agreement to sell propounded by him, contention raised by the appellant that his objection petition is required to be decided after framing of issues

and providing him opportunity to adduce evidence is highly misconceived. It further appears to the Court that the objection petition as well as the consequent proceedings are nothing but an abuse and misuse of process of law in order to delay execution of an eviction order passed in favour of the decree holder. This apart, counsel has fairly conceded that the agreement to sell propounded by the appellant is not a registered document. Therefore, the same cannot be used by the appellant to his advantage to seek protection of his alleged possession by taking resort to Section 53-A of the Transfer of Property Act, 1882, by raising a plea of part performance.

In view of the above, neither any error much less illegality can be found in the impugned order nor plea of the appellant can be accepted that his objection petition requires adjudication after permitting him to adduce evidence.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine.

APRIL 27, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE