

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

CR No.5188 of 2017
Date of decision : 08.08.2017

Jagtar Singh

...Petitioner

Versus

Manjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in revision petition under Article 227 of the Constitution of India against the order dated 04.07.2017 passed by the Civil Judge (Junior Division), Ludhiana allowing the application of the bank to be added as party i.e. defendant No.3.

The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 27.09.2012. During the pendency of the suit, State Bank of India had filed an application under Order 1 Rule 10 CPC for adding bank as defendant No.3 in the suit.

It was asserted by the bank that the property which is subject matter of the suit was sold to Sandeep Gupta in an open auction and sale certificate was issued on 15.02.2007. However, the sale deed could not be executed for one reason or the other. The learned trial Court after appreciating the facts available on the file has allowed the application.

Learned counsel for the petitioner has submitted that the bank had no clear title. The bank also did not had a decree of Court. He has further submitted that unless a clear title is there, application filed by the bank was not maintainable. He has further submitted that the suit for specific performance of the agreement to sell is between Promisor and Promisee and, therefore, no one who is alien to the agreement to sell can be added to the agreement to sell.

I have considered the submission. However, I am unable to agree with the same.

It is not in dispute that the State Bank of India sold the property in dispute by way of public auction and a sale certificate has been issued in favour of one Sandeep Gupta. The bank is a nationalized bank. The bank has claimed that the defendants had deposited the original title deeds while taking the credit facility. Thereafter, the defendants committed default and account became Non Performing Assets (NPA). It is further pleaded that the applicant-bank initiated the recovery proceedings and ultimately sold the property.

There is some substance in the submission of the learned counsel for the petitioner that in a suit for specific performance of the agreement to sell, only the validity and enforcement of the agreement is to be seen. However, in the present case, contract is with respect to the immoveable property, which has already been sold in a public auction. Even the sale certificate has been issued. The property was mortgaged with the bank by the promisor of the agreement to sell, defendant in the suit. In these circumstances, the presence of the bank is necessary for deciding whether

the property still vests with the defendant(s) or not.

Taking into consideration the order passed by the learned trial Court, I find no reason to interfere. The present Revision Petition is dismissed.

08.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No