

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

**CR No.6352 of 2016(O&M)
Date of Decision: 31.10.2017**

Shankar Lal (since deceased) through LRs. Sandhya Devi
and others ...Petitioners

Versus

Anoop Kumar Garg ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Ms. Deepa Jain, Advocate
for the petitioners.

Mr. Harish Nain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of order dated 17.08.2016 passed by the Civil Judge (Senior Division), Faridabad whereby objections filed by them were dismissed.

[2]. Plaintiff/respondent filed a suit for specific performance against Shankar Lal on the basis of agreement to sell in respect of house measuring 151 sq. yards for being part of khasra No.34/12 situated in the revenue estate of village Saran, Tehsil and District Faridabad.

[3]. The suit was decreed vide judgment and decree dated 18.04.2011 against predecessor-in-interest of petitioner i.e.

Shankar Lal. The appeal filed against the judgment and decree dated 18.04.2011 was also dismissed by the Lower Appellate Court on 07.09.2012. The execution petition was filed on 23.01.2013. Judgment debtor died on 02.05.2014. The *ex parte* proceedings were conducted against the judgment debtor on 29.08.2014. Petitioners filed objections on 08.05.2015 in the execution and the objections have been dismissed vide the impugned order.

[4]. Material on record shows that the appeal filed by the judgment debtor before the Lower Appellate Court was dismissed on 07.09.2012 and the judgment debtor was directed to refund the amount of Rs.3,61,400/- with interest @ 12% within three months from passing of judgment and decree, failing which the decree holder was held entitled to get the agreement dated 06.01.2006 executed by process of the Court. The amount was not deposited by the judgment debtor and the judgment debtor executed an alleged family settlement dated 05.12.2012 and alienated the suit property in favour of his son namely Vinod Kanauji. While decreeing the suit on 18.04.2011, the trial Court directed the defendant/judgment debtor to execute the sale deed in furtherance of agreement to sell within two months. It was observed in the judgment that actual possession of the suit property was already with the plaintiff.

However, Lower Appellate Court partly modified the judgment and decree thereby converting the relief of specific performance to relief of recovery with interest. Judgment debtor was directed to pay the amount within three months, failing which the plaintiff was held entitled to get the agreement executed as per law. Instead of honouring the judgment and decree of the Lower Appellate Court, the judgment debtor alienated the suit property in favour of his son in furtherance of alleged family settlement dated 05.12.2012.

[5]. Petitioners also filed Civil Revision No.4757 of 2015 titled Shankar Lal (since deceased) through his LRs Vs. Anoop Kumar Garg against the order dated 18.04.2015 vide which sale deed was ordered to be executed in favour of the decree holder. The said revision petition was dismissed by the High Court on 30.07.2015. The order assailed in the aforesaid revision petition was the order dated 18.04.2015, wherein it was noticed that the proposed sale deed was filed. An application for impleading LRs was also filed in the Court. The said application was disposed of in terms of Order 22 Rule 12 CPC. Since the judgment debtor was already proceeded against *ex parte* on 29.08.2014, the Court appointed its Reader as Local Commissioner for getting the sale deed executed in terms of judgment and decree dated 07.09.2012 as the judgment debtor had already failed to comply

with the direction contained in the judgment and decree dated 07.09.2012. After the dismissal of the aforesaid revision petition on 30.07.2015, the consequent sale deed has been registered with the process of the Court. While filing revision petition No.4757 of 2015, a specific ground was taken in para No.9 of the revision petition that the petitioners are ready to make the payment of said decree with interest because they don't have any house to reside in Faridabad. Para No.9 of the said revision petition was to the following effect:-

“That petitioners are ready to make the payment of said decree with interest because they don't have any house to reside in Faridabad. It is very hardship to them if the only roof available to them is snatched”

The argument/plea taken by the petitioners was not entertained and the revision petition was dismissed.

[6]. In the present revision petition, the same argument was raised by the petitioners. The factum of filing earlier revision petition i.e. CR No.4757 of 2015 was concealed. Petitioners got issuance of notice of motion on 10.11.2016 on the premise that they are ready and willing to honour the decree and their objections have been illegally dismissed.

[7]. In view of facts and circumstances of the case, particularly in view of the fact that earlier revision petition was dismissed on 30.07.2015 and the factum of said revision petition

was concealed in the present revision petition, therefore I am of the view that the petitioners have not come to the Court with clean hands. The sale deed has already been registered. In my considered view, no indulgence can be granted in favour of the petitioners. This revision petition is accordingly dismissed.

31.10.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No