

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6707-2015 (O&M)
Date of Decision:- 27.09.2017

Lakhwinder Singh

.....Petitioner

Versus

Dilbag Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

None for the respondents.

RITU BAHRI, J. (Oral)

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 27.07.2015 (Annexure P-7), passed by learned Civil Judge (Junior Division), Hoshiarpur and judgment dated 02.09.2015 (Annexure P-8), passed by the learned Additional District Judge, Hoshiarpur, whereby the objections to the execution, filed by the present petitioner/judgment debtor, has been dismissed.

Plaintiff-Dilbag Singh had filed a suit against Manjit Singh for specific performance of agreement dated 06.02.1996 by which the owner i.e. Manjit Singh agreed to sell the property in dispute to the

decree holder. This suit was filed on 16.6.1997 and was decreed on 07.01.2004. During the pendency of this suit, the petitioner/judgment debtor had purchased the suit property on 08.07.1997 from Manjit Singh and he was in possession of the property till the suit of Dilbag Singh was decreed. Initially, the suit was decreed for alternative relief of return of earnest money and subsequently, on an appeal filed by Dilbag Singh, the suit for specific performance was decreed on 12.01.2007. The present petitioner has filed RSA No.2158 of 2007, which was dismissed by this Court on 19.05.2010.

The objections, filed by the present petitioner to the execution under Order 21 Rule 101 CPC, have been dismissed.

Learned counsel for the petitioner has argued that initially the plaintiff had entered into an agreement to sell dated 06.02.1996 with Manjit Singh and as per the said agreement amount of ₹1,00,000/- has been made against the total sale consideration of ₹1,50,000/-. During the pendency of this suit, the present petitioner/judgment debtor had purchased the said property on 08.07.1997.

The question for consideration in the present case whether 50% deposited by the plaintiff towards the balance sale consideration is to be released in favour of the present petitioner.

In the present case, the application has been dismissed for releasing of amount of ₹50,000/- on the ground that the subsequent purchaser has a separate remedy to file a suit against his own vendor for recovery of the sale consideration paid to him. Moreover, the judgment

referred to by learned counsel for the petitioner in case **Ramji Lal and others Vs. Ram Pershad and another**, AIR 1979 Delhi, page 129 has not been considered by both the Courts below rather they have referred to a judgment passed in case **Smt. Niranjana Kaur and others Vs. The Financial Commissioner Revenue**, 2011(1) Civil Court cases, 168 in which Full Bench of this Court has held that subsequent vendee can claim for refund or damages from his vendor whereas in **Ramjit Lal's (supra)** the Delhi High Court considering the case where the balance consideration had been deposited by the plaintiff in the Court and while declaring the sale deed in favour of the subsequent purchaser as null and void, it was directed that the balance sale consideration deposited with the trial Court should be released in favour of the subsequent purchaser as the original vendor should not be given payment of the suit property twice. In paragraph No.6 of the said judgment, it has been so observed: -

“6. It is now necessary to focus attention on the mistake made by the trial court when passing the judgment on 17th Aug. 1971. It is well understood that in a suit for specific performance based on a contract, any subsequent transferee who has notice is also bound by the terms of the contract and a decree for specific performance has also to be passed against such a transferee. The present suit was decided when the Specific Relief Act, 1877 was in force and the precise Section dealing with this case is S. 27 which is in the following terms:-

"27. Except as otherwise Provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant:

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation."

The persons who are bound by the contract include persons who have obtained a subsequent title. This is provided in sub-clause (b) of the above 'Section. The normal 'decree which is to be passed in such cases has been the subject-matter of many reported decisions. I refer for reference to Kafilladdin v. Samiraddin Air 1931 Cal 67, Gaurishankar v, Ibrahim Ali Air 1929 Nag 298 and Mathai Thommen v. Thomas Mathew Air 1952 Trav-Co. 199 and other similar cases. These judgments show that the proper decree to be drawn up in such cases is that the subsequent transferee must be ordered to execute the sale-deed so as to bring about the transfer to the decree-bolder. In my view, the trial Court in this case has blundered very badly by directing only the first defendant to execute the sale deed and the cancellation of the previous sale in favor of judgment debtors 2;o 5 is not a procedure appearing in the Specific Relief Act. At the same time, I must also say that there was no prayer for cancellation of that sale in the suit. The plaintiff had sued for specific performance of the contract, he had joined the subsequent purchasers, who he claimed in law were equally bound with the original contracting party as they had notice, and thus were bound by the agreement to sell. This is so provided in S. 27(b) of the Specific Relief Act, 1877, and on reading the judgment in the suit I find that though the legal position was clearly understood by the trial judge, it appears that on account of inexperience the Subordinate judge was not able to appreciate that he had to pass a decree for specific performance against all the defendants and not a decree cancelling the sale in favor of the subsequent purchasers (judgment-debtors Nos. 2 to 5, the present appellants). He should also have directed the transferee-Judgment, debtors to execute the sale deed and these Judgment-debtors should also have been paid the consideration for the sale as they were then the owners of the property on account of the subsequent transfer to them. By some very obvious error, the trial court was of the view that he should cancel the sale-deed in favor of the present appellants and pass the decree for specific performance against

the previous owner. However, the decree is silent as to how the decree for cancellation of the sale is to be carried into effect. There ought to have been a direction that defendants Nos. 2 to 5 should give up possession and should be paid back the consideration of Rs. 17,000/- already paid by them or should be paid such other sum as could have been worked out by the Court. In fact, the decree merely orders the cancellation without directing the reversal of the obligations incurred by the contracting parties which are ordinarily, delivery of possession and payment of consideration. Having located this very serious blunder, which has so far passed undetected, I am now to find out a way which should restore to the parties the true consequences and effect of getting the suit decreed. I find myself unable to rectify the decree as nobody has appealed against the decision of the High Court which has merely affirmed the decree, and hence, the alternative is either to say that the decree cannot be executed, which would mean denying the plaintiff the fruits of the litigation, or to find a way in which the present appellants can be made to give up possession and also be refunded the consideration paid by them. (Rs. 17,000/-). “

It has been further observed in the said judgment that for execution of the decree, the balance sale consideration of ₹17,000/- had to be paid to the judgment debtor, who had to give up his property as the decree for specific performance has been passed against the original vendor as well as the subsequent purchaser. Since the sale deed of the subsequent purchaser has been cancelled, the sale consideration deposited with the trial Court should be paid to him as he has to hand over the possession to the plaintiff. In this backdrop, a direction was given by the Delhi High Court to release ₹10,000/- deposited in the Court by the decree holder to the subsequent purchaser. It has been further observed that the judgment debtors were further entitled to get remaining amount of ₹7,000/- from the first judgment debtor.

In the facts of the present case, as per agreement between first judgment debtor No.1 and judgment debtor No.2 (present petitioner), if the dispute with respect to this property could not be solved, the judgment debtor was to give an alternate plot and for that alternate plot the present petitioner can have the independent remedy. Moreover, as far as deposited amount of ₹50,000/- with the Court is concerned, the petitioner has handed over the possession to the decree holder, therefore, this amount should be released to him. Further, for the said amount, he has no remedy against judgment debtor No.1.

In view of above-said facts, the present revision petition is allowed and the impugned orders are modified accordingly.

September 27, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No