

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.674 of 2016 (O&M)

Date of decision: 19.12.2017

Surji Devi

..... Petitioner

Versus

Basti Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sudhir Aggarwal, Advocate
for the petitioner.

Mr. Surinder Dagar, Advocate
for respondent No.1.

Mr. Karan Singh, Advocate
for respondents No.2 to 4.

ANIL KSHETARPAL, J. (ORAL)

Decree-holder is in the revision petition. Decree-holder is praying for delivery of actual possession of the suit property. It is not in dispute that in a suit for possession by way of specific performance of agreement to sell, a decree was passed in favour of the decree-holder on 31.08.2012. Decree was with respect to a constructed residential house having seven rooms on the ground floor and nine rooms on the first floor.

It is further not in dispute that pursuant to the aforesaid decree for possession by way of specific performance of the agreement to sell, sale deed has been executed in favour of the petitioner-decree holder.

Petitioner-decree holder filed an application for delivery of actual possession which was objected to by the judgment debtor and third

party-objector claiming that the property is a joint property and the partition proceedings are pending. Learned Court kept the matter pending.

It is further not in dispute that the aforesaid suit for partition has been withdrawn.

Learned Executing Court has refused to deliver possession on the ground that the petitioner-decree holder has only purchased a share in the joint property and therefore, warrants for delivery of possession cannot be issued.

In the considered opinion of this Court, the Court has overlooked the fact that the decree is with respect to a residential house which has been constructed on the land in dispute. No doubt, the agreement was with respect to 1/4th share in the land measuring 01 kanal and 10 marlas which is equivalent to 7½ marlas. However, the agreement was with respect to a house which has already been constructed. The residential house is identifiable. This being the position, the decree was for a specific constructed portion.

Learned counsel for the respondent third party-objector has submitted that the petitioner can file an application for partition. He has further submitted that without partition, the decree cannot be executed by issuing warrants of actual possession.

It is not disputed before me that the entire area measuring 01 kanal and 10 marlas is under construction. Parties have respectively constructed their houses by leaving a passage. Basti Ram had constructed a house which he agreed to sell. Suit filed by the petitioner was decreed. Therefore, the decree is not with respect to a property which cannot be identified. It is not a decree with respect to the agriculture land where one

co-owner does not know that in partition, he would get which specified portion.

Taking into consideration these facts, the order passed by learned Executing Court is clearly erroneous. The decree passed in favour of the petitioner has to be given effect to.

In view thereof, the impugned order is set aside. Learned Executing Court is directed to deliver actual possession as per the sale deed of the suit property to the petitioner.

Revision petition is allowed.

19.12.2017

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No