

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

CR-6934-2017

Date of decision: 07.10.2017

Harmal

...Petitioner

Versus

Sunderpal

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Akshay Kumar Goel, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 28.08.2017 passed by the Additional District Judge, Bhiwani, whereby application filed by defendant-appellant (petitioner herein) under Order 41 Rule 1 CPC for permitting him to file appeal as an indigent person, has been dismissed and he has been directed to pay the Court fee on the memorandum of appeal filed against the judgment and decree dated 20.05.2015 passed by the Civil Judge (Junior Division), Loharu.

Sunderpal-respondent had filed a suit for possession by way of specific performance of agreement to sell dated 11.12.2012 in respect of the land measuring 51 Kanals 6 Marlas, as detailed in the head note of the plaint, situated within the revenue estate of Ahmadwas, Hadbast No.56, Tehsil Loharu, District Bhiwani. The said suit was decreed vide judgment and decree dated 20.05.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Loharu. Against the said judgment, defendant (petitioner herein) filed an appeal along with an application under Order 41 Rule 1

application has been dismissed vide impugned order dated 28.08.2017.

Before passing of the order, report of the Collector was sought, wherein it was stated that the applicant/appellant (petitioner) had no other movable or immovable property, except cultivable land measuring 51 Kanals 6 Marlas. While passing the impugned order, it has been observed that even though in the report of Collector, it has been mentioned that the appellant had no other movable or immovable property, except the above said land, but the report did not disclose as to whether his financial position was sound or not. At the same time, plaintiff-respondent highlighted that appellant-petitioner had executed release deed in favour of his son and grandson in the year 2010 before entering into the agreement to sell in question with plaintiff-respondent. Moreover, since he had denied execution of the agreement to sell, he must be in possession of the land measuring 51 Kanals 6 Marlas. Therefore, he could not be an indigent person.

The argument of learned counsel for the petitioner that possession of this land was already taken by the plaintiff (respondent) cannot be accepted, as petitioner has not been able to give any specific date when possession was taken from him. In the absence of any evidence with regard to his financial position, the application of the petitioner has been rightly dismissed by the trial Court.

No ground is made out to interfere in the impugned order.

Dismissed.

07.10.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No