

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7638 of 2017
Date of decision:06.12.2017

Iqbal Singh

..... Petitioner

Versus

Bhagwan Singh and anr.

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. R.S. Bajaj, Advocate for the petitioner.

Mr. Deepak Nayar, Advocate for the respondents.

B.S. Walia, J. (Oral)

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside order dated 20.07.2017 (Annexure P4) passed by the learned Additional District Judge, Amritsar whereby the appeal under Order 43 Rule 1(r) of the CPC against order dated 3.2.2016 passed by the learned Civil Judge (Senior Division), Amritsar (Annexure P3) was dismissed.

2. Brief facts of the case leading to the filing of the instant revision petition are that the plaintiffs-respondents filed a suit dated 3.6.2013 for recovery of Rs.20 lacs along with interest @ 24% per annum from the date of execution of registered mortgage deed dated 21.08.2006 by defendant-petitioner qua land measuring 15 kanals 1 marla situated at village Meerakot, Tehsil and District

Amritsar without delivery of possession of land to the plaintiffs-respondents.

3. As per the terms and conditions agreed upon between the parties, mortgaged land was to be redeemed by 19.08.2007 and the defendant-petitioner was to repay amount in question along with interest thereon @ 2% per month i.e. 24% per annum.

4. It is the stand in the revision petition that before the expiry of period of redemption of the mortgaged land, time for redemption was extended vide agreement dated 20.08.2007 upto 19.08.2008 and thereafter, vide agreement dated 21.08.2008 time for redemption was extended upto 15.08.2011 and lastly vide agreement dated 29.11.2011, while giving additional Rs.5 lacs to the defendant-petitioner, time for redemption was extended upto 30.05.2012 and on failure of the defendant-petitioner to repay the sum of Rs.20 lacs along with interest at the agreed rate, the plaintiffs-respondents filed a suit for recovery of Rs.20 lacs along with an application under Order 39 Rules 1 and 2 for restraining the defendant-petitioner from parting with possession of the land in question.

5. Defendant-petitioner put in appearance and filed written statement contesting the claim of the plaintiffs-respondents. Eventually the learned trial Court vide order dated 3.2.2016 allowed the application and restrained the defendant-petitioner from alienating the land in question in favour of any other person except the plaintiffs-respondents till the disposal of the suit on merits. Appeal filed by the defendant-petitioner was also dismissed by the learned Additional District Judge, Amritsar vide order dated 20.07.2017 (Annexure P4).

6. It is in the aforementioned circumstances that the defendant-petitioner has approached this Court by way of the instant revision petition. The only submission made by learned counsel for the defendant-petitioner is that restraint order has been passed against the defendant-petitioner in respect of 15 kanals and 1 marla land which as per collector rates is of the value of Rs.1,52,39,840/- whereas the claim of the plaintiffs-respondents is only to the tune of Rs.20 lacs along with interest @2% per annum and that the defendant-petitioner is in negotiations with PUDA for the sale of the suit property which would fetch amount to the tune of Rs.10 crores approximately. Therefore, the restraint order would be counter-productive inasmuch as in the absence of ability to sell the property in question to PUDA, defendant-petitioner would not be able to pay the claim of the plaintiffs-respondents in the eventuality of the suit being decreed.

7. In the afore-mentioned background, learned counsel for the defendant-petitioner prays for modification of the restraint order to restrict the same qua 2 to 3 kanals of land instead of 15 kanals 1 marla land.

8. Prayer of the defendant-petitioner is vehemently opposed by learned counsel for the plaintiffs-respondents who contended that the aforementioned plea was never raised before the Courts below, therefore, the plaintiffs-respondents had no opportunity to rebut the same. Besides, the claim of the plaintiffs-respondents was for recovery of a sum of Rs.20 lacs along with interest @ 24% per annum with effect from the year 2006 and it could not be said with certainty as to when the suit would be decided and the litigation between the parties come to an end.

Moreover, the stand of the defendant-petitioner was contradictory inasmuch on the basis of collector rates, the rate of entire land was claimed to be around Rs.1.5 crores while in the same breath it was claimed that defendant-petitioner was in negotiations with PUDA for the sale of the land in question for Rs.10 crores.

9. Learned counsel for the plaintiffs-respondents contended that in the circumstances the orders passed by the learned Courts below restraining the defendant-petitioner from alienating the land in question did not warrant any intervention.

10. Faced with the afore-mentioned situation learned counsel for the defendant-petitioner contended that the appropriate value of the land in question could not be brought to the notice of the learned trial Court and that had the correct valuation of the property been considered by the learned trial Court, the position with regard to restraint against alienation would not have been qua the entire 15 kanals 1 marla land. Learned counsel prays that in the circumstances, he be permitted to move an application before the learned trial Court to place on record the correct valuation of the land in question in order to seek modification of the orders restraining alienation of the land in question except to the plaintiffs-respondents.

11. I have considered the submissions of learned counsel for the parties.

12. Admittedly, the mortgage was created by the defendant-petitioner in respect of 15 kanals 1 marla of land against a sum of Rs.15 lacs on 21.8.2006 which was eventually increased to Rs.20 lacs on 29.11.2011. As per the terms and conditions agreed upon the land was to be redeemed within a stipulated period of time on

payment of the mortgage amount alongwith interest @ 2% interest per annum. The mortgage of the land in question was without delivery of possession of land to the plaintiff-respondents. In the circumstances, application filed by the plaintiff-respondents under Order 39 Rules 1 and 2 CPC for restraining the defendant-petitioner from parting with possession of the land in question to anyone except the plaintiff-respondents was allowed by the learned trial Court and upheld by the learned Lower Appellate Court. The only submission of learned counsel for the petitioner is that the value of the land is approximately Rs.10 crores and that defendant-petitioner is in negotiations with PUDA for selling the same and that order restraining alienation of the entire 15 kanals 1 marla of the land be modified so as to restrict alienation to 2 to 3 kanals of land. No such submission was made before the learned Courts below, therefore, the plaintiff-respondents never got any opportunity to rebut the same. Besides, the stand of the defendant-petitioner is contradictory inasmuch as the value of the land as per Collector rates is stated to be approximately 1.5 crores whereas in the same breath it is claimed that negotiations are on between the defendant-petitioner and PUDA for selling the land in question for Rs.10 crores. In the circumstances, I find no circumstances warranting intervention with the well reasoned orders passed by the learned Courts below. As regards the plea for grant of liberty to the defendant-petitioner to move an appropriate application for modification of the order of the Courts below, it needs no mention that if so, advised, the defendant-petitioner would be at liberty to move an appropriate application in accordance with the provisions

of law and in case any such application is moved, the same would be considered and decided as per law.

12. Revision petition is disposed of in the light of the position as noted above.

(B.S. Walia)
Judge

06.12.2017
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Note:

1. Whether the order is speaking/reasoned : Yes/No.
2. Whether the order is reportable : Yes/No.