

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

CR No. 9032 of 2017(O&M)

Date of decision: 22.12.2017

Bachan Singh

.....Petitioner

VERSUS

Rattno Devi

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.S. Sandhu, Advocate for the petitioner.

REKHA MITTAL, J.

The petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India to assail orders dated 17.02.2017 (Annexure P-1) passed by the Civil Judge (Senior Division), Pathankot and dated 01.09.2017 (Annexure P-2) by the Additional District Judge, Pathankot whereby application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the respondent/plaintiff was allowed by the trial Court and order passed by the trial Court has been affirmed in appeal.

Counsel for the petitioner has submitted that the respondent/plaintiff has filed a suit for specific performance, recovery, permanent injunction and symbolic possession on the basis of agreement to sell whereby the petitioner/defendant agreed to sell land measuring 16 kanals situated at village Andoi for a sale consideration of Rs.15 lakhs out of which an amount of Rs.6,50,000/- was paid towards earnest money and the sale deed was agreed to be executed on 25.01.2017. It is argued with vehemence that though in the agreement of sale, there is a recital that

possession of land in question has been delivered by the vendor in favour of the proposed vendee but actually land is in possession of the petitioner/vendor who has sown and harvested sugarcane crop that was sold to a sugar mill. It is further submitted that the Court in appeal has accepted plea of the petitioner that in the revenue documents particularly the latest jamabandi, the petitioner is recorded to be in possession of the suit land but still the Court has affirmed interim injunction granted by the trial Court. In addition, it is argued that though in the agreement of sale, value of the suit property is mentioned as Rs.15 lakhs but actually market value of suit land is Rs.80 lakhs.

Counsel for the petitioner has not disputed that in the agreement relied upon by the respondent/plaintiff on the basis whereof she has instituted the suit for specific performance, recovery, permanent injunction and symbolic possession, it has been incorporated that possession of land agreed to be sold has been delivered by the petitioner in favour of the respondent. The petitioner has not disputed execution of the agreement though he has raised dispute qua possession as well as value of the land in question. Mere fact that in the revenue records, no change has been got incorporated by the respondent on the basis of agreement is not sufficient to uphold plea of the petitioner much less to say that consistent findings recorded by the Court below suffer from illegality much less perversity warranting intervention. As per the agreement, sale deed was to be executed in January 2017 and the respondent/plaintiff instituted the suit on 31.01.2017. This apart, the respondent/plaintiff has claimed symbolic possession only, therefore, in case the suit is decreed, he cannot ask for actual possession in view of Section 22 of the Specific Relief Act, 1963.

Under the circumstances, I find myself unable to accept contention of the petitioner that orders impugned are liable to be set aside. I would hasten to add that counsel for the petitioner, in response to a query, has fairly informed that the petitioner has not placed on record any documents with regard to sale of sugarcane crop, allegedly cultivated in the land in question.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case nor would cause prejudice to the petitioner at the time of final adjudication by the trial Court. No order as to costs.

DECEMBER 22, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no