

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23774-2012 (O&M)

Date of decision: 27.11.2017

Jagan Nath

... Petitioner

Vs.

Sukhjinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Rangi, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondent No.5.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the order dated 21.05.2012 (Annexure P-9) passed by the Additional Sessions Judge, dismissing the revision petition filed by the petitioner, challenging the order dated 03.02.2009 (Annexure P-8) passed by the Sub Divisional Judicial Magistrate, vide which the objections filed by respondent No.5 Jagjit Singh in execution of sale of agricultural land for realization of arrears of maintenance of respondents No.1 to 3 against respondent No.4, were accepted and sale proceedings were set aside.

Brief facts of the case are that respondents No.1 to 3 filed an application under Section 125 Cr.P.C. for grant of maintenance against respondent No.4, which was allowed by the Court of SDJM, Samrala. In

execution of the order, warrants of attachment for the recovery of Rs.51,600/- were issued and the Naib Tehsildar was directed to execute the warrants by way of attachment of 9 kanal 7 marlas of land, which was owned by respondent No.4 and vide rapat No.422 dated 22.06.2001, the said property was attached. Since respondent No.4 failed to pay the amount, the attached property was put to auction on 20.09.2006. The petitioner was the successful auction purchaser and deposited an amount of Rs.90,579/- on the date of auction and the remaining amount of Rs.2,71,734/- was deposited in the treasury.

Thereafter, respondent No.5 filed objections against the warrants of sale on 10.11.2006 on the allegations that respondent No.4 Bhupinder Singh had entered into an agreement to sell dated 05.07.1995 and delivered the possession to him. Respondent No.5 had filed a suit for specific performance on the basis of aforesaid agreement to sell and in objections prayed for setting aside the sale proceedings dated 20.09.2006. The said objections filed by respondent No.5 was allowed vide impugned order dated 03.02.2009 (Annexure P-8). The petitioner filed a revision petition, which was also dismissed by the revisional Court vide impugned order dated 21.05.2012 (Annexure P-9).

Notice of motion in this case was issued on 08.08.2012 and the petition remained pending since then. Respondent No.5 has filed reply and has opposed the prayer made in the petition on the ground that vide judgment and decree dated 28.10.2011, a decree for symbolic possession by way of specific performance of agreement to sell dated 05.07.1995 has already been passed. The operative part of the judgment is reproduced as below: -

“In the light of above discussion Civil Appeal No.13 of 2010 is hereby dismissed. Civil Appeal No.12 of 2010 is hereby partly

allowed and suit of the plaintiff/appellant is partly decreed and it is held that plaintiff is entitled to get symbolic possession of land measuring 12K-19M out of total suit land by way of specific performance of agreement Ex.P1 dated 05.07.95, on payment of balance sale consideration by the appellant/plaintiff within three months from today, on which Bhupinder Singh son of Mohkam Singh shall execute the sale deed to aforesaid extent in favour of plaintiff/appellant within next one month, failing which plaintiff/appellant is entitled to get the same executed with the intervention of trial Court. In case the land measuring 12K-19M is still lying attached for recovery of Rs.51,600/- or any other amount then the balance sale consideration is to be adjusted against the said amount. Plaintiff/appellant is also entitled to decree of permanent injunction restraining Bhupinder Singh son of Mohkam Singh from alienating aforesaid land measuring 12K-19M and further restraining him from dispossessing the plaintiff/appellant from the said land except in due course of law. It is made clear that plaintiff/appellant is not entitled to alternative relief of recovery of Rs.4,69,000/- along with interest. To this extent, the impugned judgment stands set aside. However, the parties are left to bear their own costs. Copy of this judgment be placed on the judicial file of civil Appeal No.13 of 2010.”

On the last date of hearing, the case was partly heard and the petitioner sought time to verify the fact that if the amount deposited by him in pursuance to the auction purchase is lying deposited in the treasury. Counsel for

the petitioner submits that aforesaid amount of Rs.90,579/- as well as the amount of Rs.2,71,734/- deposited by the petitioner was lying deposited in the treasury.

In view of the fact that the objections filed by respondent No.5 have been allowed by both the Courts below in the light of judgment dated 28.10.2011 passed by the Civil Court, thereby adjusting the amount of Rs.51,600/-, which was payable by respondent No.4 to respondents No.1 to 3, I find no merit in the present petition.

However, it will be open to the petitioner to withdraw the aforesaid amount of Rs.90,579/- and Rs.2,71,937/- deposited by him in the treasury and if permissible, the petitioner may take his legal course against respondent No.4 for the recovery of interest.

With the abovesaid observations, this petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

27.11.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No