

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

ESA No.35 of 2017

Date of Decision: 20.07.2017

Hari Shankar Mishra

.....Appellant

Versus

Sunil Sharma and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Jagdish Manchanda, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.8856-C of 2017

For the reasons mentioned in the application, the same is allowed. Delay of 9 days in re-filing the appeal is condoned.

Main case

[1]. Appellant has assailed the order dated 08.09.2014 passed by Civil Judge (Senior Division), Faridabad and order dated 19.01.2017 passed by Additional District Judge, Faridabad, whereby objections filed by respondents No.1 and 2 under Order 21 Rules 97, 98, 99 CPC were accepted and appeal filed against the said order was dismissed.

[2]. Objectors/respondents No.1 and 2 filed the objections on the ground that there was an agreement to sell executed between them and defendant/judgment debtor in the month of March 2005, whereby judgment debtor agreed to sell his House

No.1125, Sector-19, Faridabad comprised in 350 sq. yards in favour of objectors for a sale consideration of Rs.14,35,000/-. After the aforesaid agreement to sell, judgment debtor (R.S. Bidlan) filed an application before the Estate Officer, HUDA for obtaining necessary permission for selling the house in favour of objectors. On 17.06.2005, permission was granted by the Competent Authority, HUDA in favour of judgment debtor for transfer of the property in favour of objectors and consequently, no dues certificate was granted on 29.06.2005. Ultimately, the house in question was sold by the judgment debtor in favour of objectors vide sale deed dated 30.06.2005. Necessary documents viz. indemnity bonds, affidavit etc. were duly executed by the judgment debtor in favour of objectors on 30.06.2005 and HUDA Authority even issued re-allotment letter in favour of objectors on 27.02.2006.

[3]. The objectors alleged that the judgment debtor and the decree holder in collusion with each other fabricated a fictitious agreement to sell and receipt dated 21.12.2004 and on the basis of said agreement to sell, the decree holder filed a civil suit on 04.01.2006 for specific performance of contract in respect of house in question. Judgment debtor in collusion with the decree holder got himself proceeded against *ex parte* and as a result of that, the plaintiff/decreed holder obtained an *ex*

parte decree of specific performance of contract on 11.08.2009 without impleading the objectors as party to the litigation. According to the objectors, the said decree was a fraud played upon the Court as well as on the objectors. Ultimately, sale deed bearing No.11491 was executed on 15.11.2010 through the process of the Court.

[4]. The objectors claimed that in execution of aforesaid decree, warrants of possession was issued by the Court and when the Bailiff visited the suit property on 22.02.2011, the objectors came to know about the passing of decree and consequent execution of sale deed. The objectors also showed their sale deed dated 30.06.2005 and letter of re-allotment dated 27.06.2006 in their favour. On coming to know the aforesaid fraud, the objectors filed objections under Order 21 Rules 97, 98, 99 CPC in the execution as third party objection.

[5]. The facts and circumstances of the case showed that vendor/judgment debtor has played a fraud upon the objectors as well as upon the Court in collusion with the decree holder. Even though the decree holder claims himself to be *bona fide*, but one fact is apparent from the record that the suit for specific performance on the basis of agreement to sell dated 21.12.2004 was filed by decree holder Hari Shankar Mishra against judgment debtor R.S. Bidlan on 06.01.2006. Notice of the suit

was issued to the defendant and the defendant was ordered to be proceeded against *ex parte* vide order dated 12.01.2006. Apparently, only 6 days time consumed for issuance of notice to the defendant as well as for proceeding the defendant against *ex parte*. The scope of third party objection is meant for meeting the present type of controversy where the rights of the objectors were determined by way of following regular procedure.

[6]. The Courts below have rightly appreciated the controversy acknowledging the rights of the objectors and the decree obtained by the decree holder cannot be executed against the objectors. The Courts below have rightly taken notice of the fact that judgment debtor R.S. Bidlan after obtaining necessary permission from HUDA obtained the NOC on 29.06.2005 and executed the sale deed in favour of objectors on 30.06.2005. Necessary indemnity bonds and affidavit were also executed by the objectors and re-allotment letter was issued by HUDA Authority in favour of objectors on 27.02.2006. The objectors had purchased the property even before the filing of the suit by the decree holder. There was nothing on record that the objectors had any knowledge and notice about the agreement to sell dated 21.12.2004 executed by judgment debtor R.S. Bidlan in favour of decree holder.

[7]. In view of above, I find no illegality in the orders passed

by the Courts below. This execution second appeal is hereby dismissed.

20.07.2017		(RAJ MOHAN SINGH)
prince		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No