

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

**ESA No.62 of 2017 (O&M)
Date of Decision: 28.11.2017**

Harvinder Kaur and others

.....Appellants

Vs

Iqbal Singh and others

....Respondents

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

Present: Mr. Ramesh Kumar Bamal, Advocate
for the appellants.

Mr. Divanshu Jain, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

CM No.13896-C of 2017

For the reasons mentioned in the application, the same is allowed. Delay of 38 days in filing the appeal is condoned.

ESA No.62 of 2017 (O&M)

[1]. This appeal has been preferred against the order dated 18.11.2015 passed by the Civil Judge (Sr. Divn.) S.A.S Nagar (Mohali) and the judgment dated 22.05.2017 passed by the Additional District Judge, S.A.S. Nagar (Mohali) whereby objections filed by the appellants under Order 21 Rules 97, 99

and 100 read with Section 151 CPC were dismissed.

[2]. Brief facts can be noticed in order to appreciate the controversy involved herein. Waryam Singh had six children namely Surinder Kaur, Harvinder Kaur, Jaspinder Kaur, Harneet Kaur, Harvinder Singh and Gurpreet Singh. An agreement to sell was executed between Anil Kumar and Neeraj Kumar at one hand and Waryam Singh on the other hand, wherein Anil Kumar and Neeraj Kumar agreed to sell the suit land in favour of Waryam Singh vide agreement to sell dated 28.01.1987 for a total sale consideration of Rs.2,40,000/-. The amount was paid towards full and final payment. The sellers executed registered General Power of Attorney in favour of Jaspinder Kaur to execute and sign conveyance deed of the said plot with the Government and to present the same before the Estate Officer, Urban Estates, Punjab, Chandigarh/Mohali and before all other authorities/deptt. concerned and before the Registrar/Sub-Registrar of the circle for its execution and registration, to admit its due execution and contents therein to be true and correct, to receive back the said deed from the office concerned and to pay the dues of the plot to the Govt. well in time, under her own signatures. Jaspinder Kaur was authorised to make all types of correspondence with the Estate Officer under her signatures and to submit all kinds of building plans in the office concerned

for sanction and to deposit and withdraw security of the plots etc.

[3]. In the agreement to sell dated 28.01.1987, following recital was made in para No.7:-

“7. That the said seller has executed General Power of Attorney in favour of Miss. Jaspinder Kaur with consent of the purchaser to do all act deeds and things for the proper management, construction and disposal transfer of said plot and the building to be erected there on, duly registered in the office of the sub registrar, Chandigarh, which shall not be revoked and cancelled by the said seller at any later stage. Till the ownership of the same is transferred in the name of the purchaser or his nominee/s or any other person/s whomsoever it is given clear understanding to the said seller that in case the said seller does so and backs out from this bargain then the said seller shall be liable for criminal prosecution and shall also be liable to refund of the purchaser 10 times of the amount received by him today, plus 10 times of the amount to be paid by the purchaser to the government, if any, plus 10 times of the cost of the construction/damages, if any without any hesitation and delay. In case the purchaser do not accept such liquidated damages, then the purchaser shall have a right to get the sale effected through court of law under Specific Relief Act at the risk and cost of the seller.”

[4]. On 28.09.2000, an agreement to sell was executed between attorney of Anil Kumar and Neeraj Kumar on one hand and Iqbal Singh on the other hand in respect of suit property

vide which Anil Kumar and Neeraj Kumar through their GPA Jaspinder Kaur agreed to sell the suit property in favour of Iqbal Singh. On the basis of aforesaid agreement to sell, Iqbal Singh filed a suit for specific performance of agreement to sell dated 28.09.2000 in respect of suit property i.e. Plot No.C-80, Phase 6, S.A.S. Nagar (Mohali). During pendency of the suit, Harvinder Kaur appellant No.1 moved application under Order 1 Rule 10 CPC on 14.12.2007 and the same was dismissed by the trial Court on 22.09.2008. The said order was never assailed by Harvinder Kaur in any forum thereafter. The suit for possession by way of specific performance was decreed by the trial Court on 09.12.2011.

[5]. Jaspinder Kaur wife of S. Bhupinder Singh and daughter of S. Waryam Singh was impleaded as defendant no.3 being GPA of defendants No.1 and 2 namely Anil Kumar and Neeraj Kumar. Jaspinder Kaur defendant No.3 filed appeal against judgment and decree dated 09.12.2011 passed by the Civil Judge (Sr. Divn.) S.A.S. Nagar (Mohali) and the same was dismissed vide judgment and decree dated 12.11.2014. Regular Second Appeal No.3198 of 2015 filed by Jaspinder Kaur was also dismissed by the High Court on 13.07.2015. Judgment-debtor remained unsuccessful even before the Hon'ble Apex Court when SLP was dismissed on 27.11.2015.

[6]. Before passing of the order by the Hon'ble Apex Court, the execution was filed by the decree-holder wherein objections under Order 21 Rules 97, 99 and 100 read with Section 151 CPC were filed by Harvinder Kaur, Surinder Kaur and Harneet Kaur daughters of late S. Waryam Singh. The objections were dismissed by the executing Court vide order dated 18.11.2015 and an appeal was preferred before the lower Appellate Court.

[7]. After the dismissal of the SLP by the Hon'ble Supreme Court on 27.11.2015, the sale deed had already been executed with the process of the Court on 21.12.2015. The lower Appellate Court also dismissed the appeal vide order dated 22.05.2017.

[8]. Learned counsel for the appellants vehemently contended that the 3rd party objections were required to be decided by way of following proper procedure as the objectors/appellants being daughters of Waryam Singh had right of inheritance after the death of Waryam Singh on 24.05.1996.

[9]. Learned counsel by relying upon **Suraj Lamp vs. State of Haryana and another, 2011(4) R.C.R. (Civil) 669** contended that even if, full payment of agreement to sell was not treated to be complete transfer/conveyance, but the same could be treated as existing agreement of sale and nothing prevented the

appellants/objectors from getting the deed registered by process of the Court for which they have already filed a civil suit for specific performance of agreement to sell dated 28.01.1987 in respect of suit land on 01.08.2016. If possession was with the vendee, then the vendee could have defended the possession under Section 53-A of the Transfer of Property Act, 1882.

[10]. Learned counsel by relying upon **Subhash Chander and another vs. Smt. Phoolwati and others, 2009(3) PLR 700; Baljit Singh vs. Balkar Singh, 2001(1) R.C.R. (Civil) 180** and **Tanzeem-e-Sufia vs. Bibi Haliman, 2002(4) R.C.R. (Civil) 1** contended that the question of fact could only be proved on the basis of pleadings of the parties and for that issues have to be framed by following proper procedure under Order 21 Rule 97 CPC.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. In the instant case, the controversy can be summed up by noticing the fact that General Power of Attorney executed by Anil Kumar and Neeraj Kumar gave wide powers to Jaspinder Kaur and on the basis of said attorney, Jaspinder Kaur entered into agreement to sell dated 28.09.2000 with the decree-holder Iqbal Singh in respect of the suit property. The suit filed by the

decree holder was decreed by the trial Court and same was upheld right upto the Hon'ble Apex Court. In pursuance of the decree, the sale deed has already been executed and registered with the process of the Court. The attempt of Harvinder Kaur for becoming party under Order 1 Rule 10 CPC was rejected on 22.09.2008 and the said order was never assailed by Harvinder Kaur in any forum. The filing of suit for specific performance by the objectors/appellants on 01.08.2016 in respect of agreement to sell dated 28.01.1987 would be tested by the competent Court on all legal parameters. At this stage, nothing can be commented upon the said suit. In execution of decree dated 09.12.2011, the impugned orders have been passed by the executing Court and first Appellate Court by dismissing the 3rd party objections.

[13]. The objectors/appellants have staked their claim on the basis of agreement to sell dated 28.01.1987 wherein it was recited that the said seller has executed GPA in favour of Jaspinder Kaur with the consent of the purchaser to do all acts/deeds and things for proper management, construction and disposal of said plot and the building to be erected thereupon, duly registered in the office of Sub-Registrar, Chandigarh which was not to be revoked and cancelled by the said seller at any later stage, till ownership of the same is transferred in the name

of the purchaser or his nominee.

[14]. The execution of decree in question is pending where the sale deed has already been executed with the process of the Court on 21.12.2015 after decision of the Hon'ble Apex Court on 27.11.2015. It is true that the executing Court cannot go beyond the decree. The attempt made by the objector/appellant No.1 remained unsuccessful when she sought to be impleaded as party defendant in the suit on the basis of her alleged right to be heirs of Waryam Singh on the basis of agreement to sell dated 28.01.1987. It is also a settled proposition of law that all frivolous and baseless objections are not necessarily required to be decided by way of following proper procedure. Reference can be made to **M/s Sunil Auto Service vs. Parikshant Suri & others, 2011(1) R.C.R. (Rent) 452.**

[15]. In the light of aforesaid facts and circumstances of the case, I find no substance in the appeal and the same is hereby dismissed.

November 28, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No