

CR No.5193 of 2008

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

CR No.5193 of 2008

Date of decision:13.09.2018

Sarabjit Saini and others

... Petitioners

Vs.

Ramesh Chander and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Gupta, Advocate
for the petitioners.

None for the respondents.

AMIT RAWAL J.

Short point involved in the present revision petition filed at the instance of the judgment debtors is whether as a consequence of judgment and decree dated 12.06.2003 passed in civil suit No.159 of 1999 granting specific performance of the agreement to sell dated 06.06.1997 in respect of land measuring 1 kanal out of khata no.81/126, khasra no.4811/1694-95 (4-11), Hadbast No.249, Tehsil and District Hoshiarpur in execution of decree can be of specific area, or share as agreed.

As per the judgment and decree, aforementioned, suit of the respondent No.1-plaintiff seeking specific performance of the agreement to sell was decreed in respect of suit property, i.e., 1 kanal out of aforementioned khata number. In pursuance to the aforementioned judgment and decree having attained finality, decree holders filed a draft sale deed

giving description of the property as under:-

“Land to the extent of 1K-0M which is bounded as under:-

East Passage

West Property of Ramesh Chander

North Property of Ram Lal

South Property of Sohan Lal

bearing khasra no.4811/1694-95(4-11) situated at village Sutehari Hadbast No.249 Tehsil and District Hoshiarpur.”

The aforementioned draft sale deed was objected to by the petitioner-judgment debtors on the premise that draft sale deed has to be in consonance with the decree as the sale deed cannot be of specific portion. The trial Court after receiving the reply on behalf of the decree holders, vide impugned order dated 22.08.2008, (Annexure P-6), rejected the objections.

Mr. Munish Gupta, learned counsel appearing on behalf of the petitioners submitted that sale deed was required to be prepared in pursuance to the decree and not of specific portion, in other words, status of decree holders would be of co-sharers and for seeking possession of specific portion, remedy lied elsewhere, i.e, by seeking partition. The trial Court abdicated in dismissing the objections, therefore, the order under challenge is without jurisdiction. The property is a part of khasra number which has not been partitioned.

Service upon respondents No.3 and 3A had already been dispensed with, vide order dated 16.03.2009. However, contesting respondent No.1, despite service, did not appear and was proceeded against

ex parte, on 10.09.2009. The revision petition stands admitted, vide order dated 13.01.2010. The same reads as under:-

“Despite service, no one is present on behalf of the respondent.

Admitted.

In the meantime, the respondent shall not be handed over the possession of specific boundaries as given in the draft sale deed in execution of the decree.”

I have heard the learned counsel for the petitioners and appraised the paper book and find force in the arguments of Mr. Gupta and the question posed hereinabove is liable to be answered in favour of the petitioner-judgment-debtors/objectors, for, concededly, the respondent/deed-holder sought the specific performance of land described hereinabove which is subject matter of the agreement to sell dated 06.06.1997. Though in the head note of the suit, land was stated to be bounded but fact of the matter is that khasra number is of an area measuring 04 kanals 11 marlas, whereas, subject matter of the land agreed to be sold was 01 kanal out of joint khata. In such circumstances, sale deed has to be in respect of a specified share but cannot be of a specific portion. Remedy for the petitioners after having acquired the ownership in pursuance to the sale deed is to seek partition. This aspect has not been looked into by the trial Court and rightly so the objections were filed by the judgment-debtors/objectors, thus, there is illegality and perversity in the impugned order and the same is hereby set aside. Resultantly, revision petition is allowed. The trial Court is directed to pursue with the execution application

in view of the observations made hereinabove. The petitioners are directed to appear before the trial Court on 08.10.2018. The trial Court shall take appropriate steps to serve the decree holder for proceeding further in the execution application.

(AMIT RAWAL)
JUDGE

September 13, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No