

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 4011-2014 (O&M)

Date of decision: 14.02.2018

Preet Mohinder Kohli and others

.....Petitioners

versus

J.S.Rana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.K.Handa, Advocate for the petitioners
None for the respondent no.2

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Service of respondent no.1 was dispensed with vide order dated 28.4.2016 passed by this Court.

Impugned in the present revision is the order dated 31.3.2014, passed by learned Civil Judge (Junior Division), Karnal, vide which, execution petition for enforcing the judgment and decree dated 28.7.2009 was dismissed.

Perusal of the impugned judgment and decree dated 28.7.2009 shows that the plaintiffs (decree holders) filed suit for specific performance against the JD J.S.Rana, who was ex-parte before the trial Court. It was pleaded that defendant was allotted a Plot No.1672, Sector -8 and 9, Sector Urban Estate, Karnal by HUDA. Defendants agreed to sell the said plot for a sale consideration of Rs.1,05,000/- to their predecessor in interest Sh.A.S.Kohli. A sum of Rs.71,290/- was paid and remaining sale

consideration was to be adjusted towards future installments. Defendant also executed power of attorney in favour of A.S.Kohli and special power of attorney in favour of plaintiff no.2. A.S.Kohli died on 28.9.1997. It also comes out in the execution HUDA was also made party. Trial Court, after recording ex-parte evidence and considering allotment letter, decreed the suit for specific performance directing the defendant to execute the sale deed in favour of the plaintiff no.1 subject to conditions, if any, imposed by the HUDA within a period of three months after the receipt of the copy of the judgment. Thereafter, the present execution was filed. While dismissing the execution, the trial Court has observed as under:-

“Since the judgment was never passed against the HUDA, the same cannot be executed against it. Moreover, the judgment debtor no.1 i.e. J.S.Rana had never become the owner of plot no.1672. Judgment Debtor no.1 had only an allotment letter in his favour regarding the plot in question. No conveyance deed was ever executed in his favour, as is evidence from the judgment and decree dated 28.07.2009 and perusal of the original case file. Since, no conveyance deed was executed by HUDA in favour of judgment debtor no.1, he was not the owner of plot no.1672, not being an owner, judgment debtor no.1 could never have transferred the ownership of plot in question in favour of the decree holders. It is a settled law that one cannot transfer a title better than his own. Therefore, the judgment and decree dated 28.07.2009 cannot be executed in favour of the decree holders. Moreover, HUDA was not a party to the civil suit qua which the present

execution petition has been filed.

I have heard learned counsel for the petitioner and have also carefully gone through the file.

I am of the view that the Executing Court erred in dismissing the execution. There was allotment letter issued by HUDA in favour of the JD. Effect of the decree is that the present decree holder will step into the shoes of JD no.1. He is stating to be paying the installments. Decree has to be faithfully executed. The objection, if any, to the transfer could be by HUDA as the decree was subject to the terms and conditions to be imposed by the HUDA. Even if HUDA was not required to be made party in the execution, the Executing Court erred in going beyond the decree, which has the effect of setting aside the findings recorded by the Civil Court.

As such, the impugned order is set aside. Execution is restored. The trial Court is directed to appoint a Local Commissioner and move the HUDA for change of the name of the allottee in favour of the decree holders to ensure that the decree holders steps into the shoes of the JD. Thereafter, subject to the approval by the HUDA, further steps will be taken up to execute the decree.

Revision is allowed accordingly.

14.02.2018

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No