

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

CR No.4349 of 2016 (O & M)

Date of Decision:-19.2.2018

Anant Ram

...Petitioner

Versus

Jagmal Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Nitin Gupta, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

The present revision petition is directed against the order dated 27.5.2016 (Annexure P-6) whereby application under Order 44 Rule 1 CPC moved by the petitioner-defendant in an appeal preferred against the judgment and decree dated 31.7.2014 whereby the suit filed by the respondent-plaintiff for agreement to sell dated 22.12.2006 was decreed, has been dismissed.

Mr. Munish Gupta, Advocate learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff instituted the suit claiming specific performance of agreement to sell aforementioned on the grounds stated therein which was contested by the petitioner-defendant by taking up the various objections. The trial Court vide judgment and decree dated 31.7.2014 decreed the suit. Aggrieved against the same appeal

was filed and Court fees of Rs.1,79,370/- was required to be affixed as the valuation of the suit property was of Rs.57,26,875/-. The lower Appellate Court during the pendency of the appeal sought the report from the Collector (Annexure P-5) dated 8.9.2014 which showed that the land agreed to be sold was the only agricultural land of the appellant-defendant and he did not have any other property. He submitted that the possession of the land measuring 41K-13M has already been handed over to the vendee.

Learned counsel for the respondent-plaintiff submitted that the possession of the property is with the petitioner and he is earning from the aforementioned property muchless paid earnest money of Rs.25,75,000/- and thereafter another amount of Rs.9,25,000/-, thus he has received a total amount of Rs.35,00,000/- from the plaintiff. Wherein the total value of the agricultural land was Rs.57,26,875/-. Counsel submits that the possession is with the defendant as the decree is for possession by way of specific performance.

I have heard learned counsel for the parties and appraised the paper book.

The receipt of the earnest money prima facie as indicated in the judgment and decree stated to have been paid to respondent-plaintiff by the petitioner-defendant. Mr. Munish Gupta, Advocate has made an attempt to impress this Court that there is specific pleading in the plaint that the possession was handed over. But the fact of the matter is that the decree has been passed for execution of performance of the sale deed by planting a decree of possession as well. The operative part of the relief granted in the

judgment and decree dated 31.7.2014 by the trial Court reads as under :-

'21. In view of foregoing discussion on issue No.1 in details, present suit is hereby decreed with costs to the effect that plaintiff is entitled for possession by way of specific performance of agreement to sell dated 22.12.2016 regarding suit land and defendant is directed to execute and register the sale deed in favour of plaintiff within two months. Decree sheet be drawn up accordingly. File after due compliance be consigned to the record room.

Announced in open Court (Jarnail Singh),
31.7.2014. Addl. Civil Judge (Sr. Divn.)
Kurukshetra.”

The Court fee which required to be paid as indicated above, in my view the petitioner cannot be permitted to sue the appeal as indigent person as prima facie the possession of the land is with the petitioner, had it been otherwise, it could have been shown to this Court through the khasra girdawaris.

Resultantly, no ground to interfere is made out. The order under challenge is perfectly legal and justified, the revision petition stands dismissed. Period of one month time is given to the petitioner to deposit/pay the Court fee.

February 19, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No