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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7460-2015 (O&M)

Date of decision : 15.02.2018

Bhura Singh

... Petitioner(s)

Versus

Daljit Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Pardeep S. Mirpur, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner/decreed-holder is aggrieved of the impugned order dated 08.10.2015 (Annexure P-7), whereby an application for executing of the sale deed of 8 kanal 0 marla in the share of total khewat instead of specific khasra No.148//7, has been dismissed.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the petitioner/decreed-holder submits that the petitioner instituted a suit seeking specific performance of agreement to sell dated 19.01.2006 in the following manner:

“Suit for specific performance of agreement to sell dated 19.1.2006, for the sale of land measuring 8 kanal 0 marla, comprising in Khewat No.728 Khatauni No.1966 and bearing Khasra No.148//7 (8-0) situated at Village Ram Tirath Jagga, Tehsil Talwandi Sabo, for sale consideration of ₹ 3,00,000/-

executed by defendant in favour of plaintiff on payment of balance amount of sale consideration of ₹ 2,45,000/- to the defendant by execution and registration of the sale deed of the above mentioned land, with consequential relief of possession of the above mentioned land, from the defendant in terms and conditions of agreement to sell, dated 19.1.2006 and as per the terms of the x agreements dated 15.3.2006 and 29.9.2006 by which the dates for execution of the sale deed was extended by the parties and the defendant received the additional amount of earnest money of ₹ 5000/ from the plaintiff or in the alternative for the recovery of ₹ 1,10,000/- from the defendant (₹ 55,000/- as refund of earnest money and ₹ 55,000/- as consolidated damages for non-performance of the agreement to sell.

AND

Suit for permanent injunction restraining the defendant from alienating in any manner, above said land measuring 8 kanal 0 marla, to any other person, except the plaintiff and also restraining the defendant from delivering the possession of the above-mentioned land to anybody else, except the plaintiffs, illegality and forcibly.”

The aforementioned suit was decreed vide judgment and decree dated 08.01.2009. During the pendency of the aforementioned application, it surfaced that the respondent-defendant/vendor was not exclusive owner of Khasra No.148//7, but had more share-holding in the entire khewat No.148, which was evident from the jambandi for the year 2012-13 (Annexure P-7). In fact, his share was to the extent of 20/489, in khasra No.148, 148//8 min which is a bigger chunk of land, therefore, the petitioner-plaintiff would be only acquiring a share in the aforementioned property, much less, entitled to symbolic possession for has to go to rigmarole of another round of litigation by filing a suit for partition, but this aspect has totally been ignored by the

Court below, thus, there is illegality and perversity.

Mr. Pardeep S. Mirpur, learned counsel appearing on behalf of the respondent-defendant submits that the decree cannot be modified as it was for a specific khasra No.148/7 measuring 8-0 kanals and therefore, application has rightly been dismissed. There is no illegality and perversity. The Court has rightly ordered for execution of sale deed for only 4 kanals in view of the revenue record, thus, urges this Court for upholding the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book. Jamabandi (Annexure P-7) has not been disputed, which shows that respondent-defendant-vendor had 20/489 share in Khasra No.148 and in 148//8, half share with brother Dilbagh Singh and in 148//13, again half share, therefore, he has having more share of land in khasra No.148. Since he was not the owner of the specific land in khasra No.148//7, a necessity arose for the petitioner to rectify the same, though it was the duty of the defendant to apprise the Court in order to strike out the equity, but the defendant kept mum and withheld the information from the Court. Be that as it may, the fact of the matter is that the petitioner-plaintiff would be getting sale deed only viz-a-viz his share, which the vendor had in the Khasra No.148 to the extent of 8-0 kanal, but not possession he would be getting a symbolic possession and would undertake another exercise of filing the suit for partition, thus, there is illegality and perversity in not noticing the aforementioned legal position.

For the foregoing reasons, the impugned order dated 08.10.2015 (Annexure P-7), is not sustainable in the eyes of law and the same is hereby set aside. The application moved by the petitioner-plaintiff

is allowed.

The Executing Court is directed to proceed further with the execution application without influence of the observations made hereinabove.

The present revision petition stands allowed.

15.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No