

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 7962 of 2017
Date of decision : May 03, 2018

Kamaluddin and others

....Petitioners

versus

Arjun and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Gaurav Mohunta, Advocate, for the petitioners

Mr. Shailender Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate and
Mr. Harman Jivtesh Singh, Advocate, for respondent nos. 1 to 4

Fateh Deep Singh, J. (Oral)

This is a revision preferred by unsuccessful JDs challenging orders dated 4.11.2017 (wrongly typed as 1.11.2017) passed by the court of learned Civil Judge (Senior Division), Nuh, Mewat allowing execution application dismissing the objections of the JDs and thereby issuing warrants of possession directing the defendants to put the plaintiffs in possession of the property in dispute.

The brief back ground is that in a civil suit the court of learned

Additional Civil Judge (Senior Division), Nuh vide judgment dated 24.8.2010 held that the plaintiffs are entitled to a decree for specific performance of agreement dated 16.4.2004 and further directing them to deposit the balance sale consideration within a period of one month directing further that defendant no. 1 to execute sale deed in favour of the plaintiffs on receipt of balance sale consideration failing which the plaintiffs shall be at liberty to get the sale deed registered as per law. In the execution the petitioners had filed objections that in the judgment of ACJ (SD) dated 24.8.2010, no relief was granted against defendants no. 2 to 5 and the plaintiffs at no point of time challenged the judgment and decree and no relief of possession has been granted to the plaintiffs and therefore on the grounds that the executing court cannot go beyond the decree sought to stall the execution of the decree holders.

Upon hearing counsel for the revisionist as well as for the respondents, it is by no means displaced by any of the sides that the claim of defendants no. 2 to 5 that they are bonafide purchasers of the suit property through sale deed dated 17.6.2004. Through judgment and decree dated 24.8.2010, specific findings have been given that the agreement so claimed to be in favour of the present JDs no. 2 to 5 which was Ex. D1 before the then trial court was nullified and precedence was given to the agreement in favour of the decree holders which was Ex. P1. The court had in that very finding held the agreement Ex. D1 to be false, forged and antedated and therefore, resultantly the sale deed Ex. D4 so claimed by them was *void ab-*

initio. This stand of the respondents-decree holders could not be refuted by the counsel for the revisionists. It needs to be reiterated here that the relief being claimed by the JDs before the Hon'ble Apex Court also stood dismissed in limine and that JD No. 1 Ashru had not filed any relief for setting aside judgment and decree dated 28.4.2010 which was ex-parte qua him. The feeble attempt of the revisionist that it is the stand of the decree holders that the defendants have forcibly ousted the plaintiffs on 4.10.2014 does not cut much ice as the plaintiffs have filed suit for specific performance of the agreement and as a natural consequence possession is to follow and which cannot be thwarted by any means by such fraudulent pleas so raised by the unsuccessful defendants/JDs. More-so the judgment clearly illustrates and is reproduced as below by way of para no. 26 therein to lay emphasis:-

“26. Keeping in view my aforesaid issuewise findings particularly on issues no. 1,2,3,4 and 6A the suit of plaintiffs succeed and the same is hereby decreed to the effect that the plaintiffs are entitled to a decree of specific performance of agreement dated 16.4.2004 Ex. P1. The plaintiffs are also directed to deposit the balance sale consideration within a period of one month and thereafter the defendant no. 1 is also directed to execute the sale deed in favour of the plaintiffs on receipt of balance sale consideration failing which the plaintiffs shall be at liberty to get the sale deed registered as per law. Decree sheet be drawn accordingly. File be consigned to record room after due compliance.”

Though counsel for the revisionist has placed reliance on **Shankar Popat Gaidhani vs Hiranman Umaji More (Dead) by L.Rs. And others, 2003 AIR (SC) 1682** but cannot derive any benefit out of it and rather they are maliciously trying to thwart the due execution of the decree and frustrate the endeavours of the decree holder to reap the benefits of the decree. Since the judgment decree has attained finality and therefore, deserves to be given effect to. Thus, finding no merit in the revision, the same stands dismissed.

May 03, 2018
'tiwana'

(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No