

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

Date of decision: 09.01.2018

1.

CR No.8677 of 2016 (O&M)

Dalel Singh and others

.....Petitioners

Versus

Sadhu (since deceased) through his legal representatives and others

.....Respondents

2.

CR No.8341 of 2016 (O&M)

Dalel Singh and others

.....Petitioners

Versus

Madho Ram and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amit Jain, Advocate,
for the petitioner(s).

Mr. O.P.S. Tanwar, Advocate,
for respondent No.1.

Ritu Bahri, J.

This order shall dispose of CR No.8341 of 2016 and CR No.8677 of 2016 together as common questions of law and facts are involved in both the petitions. For reference, facts are being taken up from CR No.8677 of 2016.

Challenge in these petitions is to the order(s) dated 15.11.2016

passed by the Civil Judge (Senior Division), Kurukshetra, whereby draft

sale deed has been accepted and a direction has been given to execute the sale deed as per judgment and decree dated 29.07.1993 and order dated 12.09.2014.

Brief facts of the case are that initially, Nasib Singh-defendant No.1 entered into an agreement to sell with Sadhu Ram-respondent No.1 on 10.07.1980 in respect of land measuring 16 Kanals. At that time, Nasib Singh stated himself to be owner of 320/6993 share of Khewat No.241, Khatoni No.345, 346, 347, 348, 349, Killa No.52. However, Nasib Singh executed sale deed dated 12.08.1980 in favour of Mihan Singh, Chhotu Ram, Bhim Singh, Dalel Singh and Suraj Bhan-defendant Nos.2 to 6 (petitioners herein). Due to this reason, Sadhu Ram filed a suit for specific performance of the agreement to sell dated 10.07.1980, which was dismissed by the trial Court. However, the first Appellate Court vide judgment dated 29.07.1993, accepted the appeal and decreed the suit in the following terms:-

“36. Consequently, accepting the present appeal with costs, judgment/decreed dated 07.12.1990 of the learned trial Court is set aside. The suit of the appellant/plaintiff for specific performance of the agreement (Ex.P1) is decreed with costs. The appellant/plaintiff would make payment of the remaining sale consideration (Rs.34,000/- less Rs.12,500/- = 21,500/-) by 30.08.1993 and the respondent/defendant No.1 (through his legal representatives) would execute the sale deed in terms of agreement (Ex.P1) in favour of the appellant/plaintiff. If the agreement to sell (Ex.P1) can survive independently and respondent/defendant No.1 (through his legal representatives) is still remaining to be owner of the share of the land i.e. 320/6993th share, the respondent/defendant No.1 (through his legal representatives) would execute the sale deed in favour of appellant/plaintiff. However, if he does not remain to be owner of such share any more, then vendees/defendant Nos.2 to 6, would join with respondent/defendant No.1 (through his legal representatives) in the conveyance of the sale deed so as to pass on the title of share i.e. 320/6993th share in favour of the appellant/plaintiff in

terms of authority reported as Dalbir Singh versus Kuljit Singh, 1993 (2) RRR (Pb. & Hr.) 319. Sale deed (Ex.DW2/3) of 640/6993th share would survive it at all, if agreement (Ex.P1) taking precedence is complied with by the respondent/defendant No.1 through his legal representatives.”

During the execution proceedings qua the above said decree, vide order dated 12.09.2014, Local Commissioner was appointed and Sub Registrar Thanesar was directed to execute and register the sale deed in view of the decree dated 29.07.1993 passed by the Additional District Judge, Kurukshetra. This order was challenged before this Court by filing Civil Revision Nos. 2904 and 2905 of 2016, which were disposed of vide order dated 16.09.2016 (Annexure P-4) by giving direction to the trial Court to pass order afresh after ascertaining the shortfall in the land holding of Nasib Singh strictly in accordance with judgment and decree dated 29.07.1993 as well as the order dated 12.09.2014 as per law. Pursuant to this order, a report from the revenue officer was called, thereby asking him to give details of the ownership of land of Nasib Singh in village Kirmach, Tehsil Thanesar as per Jamabandi for the year 1977-78. The said report is dated 10.11.2016 (Annexure P-2). After getting this report, impugned order dated 15.11.2016 was passed.

After hearing learned counsel for the parties, these petitions deserve to be dismissed. As per report (Annexure P-2) given by the revenue official (Patwari Halqa), Nasib Singh-respondent No.1 was owner to the extent of 124 Kanals 16 Marlas. Out of this land, he had sold some of the shares, details of which, is given as under:-

Mutation No.	Dated	Area sold in K-M
2010	19.01.1979	16-0

2098	20.08.1980	32-0
2149	17.10.1981	5-12
	Total	53-12

Some of the share was sold by Nasib Singh in column of cultivation which is as follows:-

Mutation No.	Dated	Area sold in K-M
1991	19.01.1979	8-0
1998	19.01.1979	7-11
2291	16.07.1984	12-0
2714	10.08.1991	12-16
	Total	40-7

Thus, total land sold by Nasib Singh was 53 Kanals 12 Marlas plus 40 Kanals 7 Marlas, which came to be 93 Kanals 19 Marlas. He was originally owner of 124 Kanals 16 Marlas and after selling 93 Kanals 19 Marlas, still land measuring 30 Kanals 17 Marlas had devolved upon his legal heirs.

As per report dated 10.11.2016 (Annexure P-2), mutation No.2901 of inheritance of Nasib Singh dated 30.03.1994 in favour of Smt. Chinto (mother) and Ramalo (widow), Laxman (son) of Nasib Singh in equal shares was sanctioned. Thereafter, vide separate mutation No.3325 of inheritance of Chinto Devi dated 28.07.2000 in favour of Smt. Ramali Devi (widow) and Laxman (son) of Nasib in equal ½ share, Jogindro daughter of Chinto Devi ½ share as ownership was sanctioned. Whatever share of inheritance of Nasib Singh came in share of his mother Chinto Devi, out of that ½ share came to Jogindro Devi sister of Nasib Singh and ½ had gone in

share of Ramalo Devi (widow) and Laxman (son) of Nasib Singh. Thus,

vide mutation No.2929 dated 21.05.1994, Ramali Devi widow of Nasib Singh sold 8 Kanals and vide mutation No.3339 of sale dated 31.05.2000, Laxman son of Nasib Singh had sold 8 Kanals and thereafter, vide mutation No.3671 of sale dated 22.02.2005, Ramali Devi sold 2 Marlas, Laxman sold 3 Marlas and Jogindro Devi daughter of Sindhu sold 37 Kanals 8 Marlas i.e. firstly due to sale of land mentioned in cultivation column and then due to mutation of inheritance, vide mutation No.3671, Ramalo Devi sold 4 Kanals 10 Marlas and Laxman son of Nasib Singh sold 4 Kanals 9 Marlas (total 8 Kanals 19 Marlas) less and Jogindro Devi sister of Nasib Singh sold 8 Kanals 19 Marlas more, which occurred due to cultivation column. Thus, at present as per inheritance of Nasib Singh, 18 Marlas of area remains balance in the name of Ramalo Devi (widow) and Laxman (son). Vide mutation No.3671, Ramalo Devi, Laxman and Jogindro Devi had sold 8 Kanals 19 Marlas more area. All the above sale deeds have been made after mutation of inheritance was sanctioned on 30.03.1994.

Agreement to sell dated 10.07.1980 Ex.P1 in favour of Sadhu Singh as well as sale deed dated 20.08.1980 in favour of defendant Nos.2 to 6 (present petitioners) was with respect to the same khasra numbers out of the share of Nasib Singh in the land. After the death of Nasib Singh, mutation was sanctioned in favour of his legal heirs and all the sales made thereafter, would not affect the execution of the decree dated 29.07.1993. At the time of passing of decree dated 29.07.1993, Nasib Singh had died and he was being represented by his legal heirs. Therefore, legal heirs of Nasib Singh were required to execute sale deed in favour of plaintiff-respondent No.1 and only in case Nasib Singh was not owner of 320/6993th share in the land, in that eventuality, present petitioners were to join with

defendant No.1 in order to execute the said sale deed. Report (Annexure P-2) is very clear to the effect that after sanctioning of mutation of inheritance in favour of legal heirs of Nasib Singh, they had made sales out of their shares. The sales made by the legal heirs of Nasib Singh was not to be made subject matter of execution of the above said decree. Moreover, while passing of the decree dated 29.07.1993 (Annexure P-1), present petitioners were not held to be *bonafide* purchasers. In view of the report (Annexure P-2), they have been rightly held to be bound by the decree dated 29.07.1993. In the present case, agreement to sell was executed on 10.07.1980 and after this date, Nasib Singh had made seven sale deeds as observed in para 6 of the impugned order. Even the present petitioners are in exclusive possession of the land and the sale deed in their favour has not been denied by them.

Since the petitioners were not held to be *bonafide* purchasers and they have admitted that they are in possession of specific khasra numbers, the impugned orders have been rightly passed by the Executing Court. In view of the above discussion, this Court is of the view that the scope of interference in the impugned order(s) is limited, as no illegality, much less perversity has been found therein warranting interference by this Court.

Resultantly, both the petitions i.e. Civil Revision Nos.8341 and 8677 of 2016 are dismissed.

09.01.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No