

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

CR No.943 of 2014 (O&M)
Date of decision : 31.05.2018

Chotu Singh

...Petitioner

Versus

Kulwant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Gupta, Advocate for the petitioner.

Mr. Parvinder Singh, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The Judgment-Debtor is in the present revision petition against the order passed by the learned Executing Court dated 06.11.2013.

Some facts would be required to be noticed. The Decree Holder-plaintiff entered into an agreement to sell with the Judgment Debtor-petitioner with respect to the land measuring 21 kanals and 12 marlas on 14.11.2006. In fact, the aforesaid land as mentioned in the agreement to sell was part of a larger khata in which the Judgment Debtor-petitioner was a co-owner.

The plaintiff while filing the suit for possession by way of specific performance of the agreement to sell made following three prayers:-

“Suit for possession through specific performance

concerning land measuring 21 kanal 12 marla having mushtil and kila No.66//2/1 (3-11) 2/2 (4-0) 7/1 (2-1) 13 (8-0) 9 Min (2-0) 12 Min (2-0) bearing Khewat Number 186 Khatuni Number 427-428 situated in Barowal Tehsil Budhlada which is subject matter of agreement to sell dated 14.11.2006 executed by the defendant in the favor of the plaintiff and the same land be transferred and executed in favor of plaintiff through a duly attested sale deed.

In the alternative the property of the defendant involving 33 kanal 12 marla Mushtil and Kila Number 66//2/1 (3-11) 2/2 (4-0) 7/2 (2-1) 13(8-0) 66//9 (8-0) 12 (8-0) bearing Khewat and Khatuni Number 186/427-428 in Barowal Tehsil Budhlada in which land measuring 21 kanal 12 marla is mentioned, its 80/672 share (approximately 4 kanal), and land measuring 22 kanal 11 marla Mushtil and Kila Number 66//3 Min (0-11) 4/2 (2-0) 8 (8-0) 3 Min (7-0) 4/1 (5-0) Khewat Khatuni Number 187/429 and 431 situated in Barowal having 120/451 share (i.e. approximately 6 kanals) and land measuring 28 kanal 9 marla Mushtil and Kila Number 81//6/1/2 (1-8) 83//5/1 (2-18) 80//10/2 (5-16) 11/1 (5-16) 20/2 (5-16) 21/1 (4-3), 21/2 (2-12) Khewat Khatuni Number 188/432/433 situated in Barowal having 232/569 share (Approximately 11 kanal 12 marla) be transferred and executed in favor plaintiff through a duly attested sale deed and possession of the same may also be transferred.

In the alternative compensation of Rs.6,00,000 (Advance money of Rs.3,00,000 and compensation of Rs.3,00,000).”

Learned trial Court framed the issues. Issue Nos.1 and 2 are relevant which are extracted as under:-

“1. Whether the plaintiff is entitled to a decree for specific performance of the agreement to sell dated 14.11.2006 as prayed for in the head note of the plaint?”

OPP

2. *Whether the plaintiff, in the alternative, is entitled to recovery of Rs.6,00,000/- i.e. Rs.3,00,000/- as earnest money and Rs.3,00,000/- as damages from the defendant as prayed for in the head note of the plaint as an alternative relief? OPP.”*

Ultimately, learned trial Court decreed the suit and held that the plaintiff is entitled to a decree for specific performance of the agreement to sell and get the property free from all encumbrances. Operative part of the judgment reads as under:-

“21. In view of the discussions in respect of issues No.1 the suit of the plaintiff is decreed with costs. The plaintiff is entitled to specific performance of the agreement dated 14.11.2006 and is entitled to get the property free from all encumbrances. Plaintiff is entitled to get the sale deed executed on deposit of remaining sale consideration within a period of 2 (two) months from today. However, in case any money towards mortgagor found due against the property which belongs to the defendant and is to be charged from such part of the share of the defendant as sold to the plaintiff, the sale proceed shall not be released to the defendant and it would be open for the bank to realize the mortgage money from the sale consideration. The present decree shall not be construed as a bar on the right of the bank to recover money from the defendant or on the right of any mortgagee in whose favour the mortgage was created prior to the agreement. Suit of the plaintiff for alternative relief stands dismissed. The remaining sale consideration be deposited in the Court within two months from today, failing which defendant shall be entitled to seek rescission of the contract in terms of Section 28 of the Specific Relief Act.

Decree sheet be prepared. File be consigned to the record room, Budhlada.”

The Judgment Debtor-petitioner filed a review application. In the review application, the assertions made were as under:-

“2. That the suit of plaintiff was based on agreement dated 14.11.2006 between parties regarding land measuring 21 kanals 12 marla contains in Mustil and Killa No.66/2/1 (3-11) 2/2 (4-0) 7/2 (2-1) 13(8-0) 9 min (2-0) 12 min (2-0) situated at Village Borewal and part of Khewat No.186 and Khatauni No.427-428. But as from the jamabandi and the case of parties defendant has 4 kanals of land in above land. So suit could be decreed regarding 4 kanals of land but instead this, Hon'ble Court decreed the suit of plaintiff as per issue No.1 i.e. from land 33 kanal 12 marlas and 28 kanals 9 marlas situated in Village Borewal. But decreeing the suit as per issue No.1 shows that suit has been decreed of the land which is not the subject matter of contract between parties. So, decreeing the suit as per agreement is correct view and as per issue No.1 is incorrect view. So, order of judgment and decree dated 20.4.2012 is self-contradictory, which has to be corrected or pronounce with clear manifest of this court. So, order of judgment and decree dated 20.4.2012 is likely to be reviewed.”

The aforesaid review application was dismissed in default on 07.12.2013. The Executing Court while finding that the Judgment Debtor was only owner of 4 kanals of land, out of the khasra numbers mentioned in the agreement to sell, ordered that the sale deed be executed out of the entire khata of 33 kanal 12 marlas and 28 kanals 9 marlas to the extent of 21 kanals and 12 marlas, as decreed by the Court.

This Court has heard the learned counsel for the parties at

length and with their able assistance gone through the documents filed in the paper book.

Learned counsel for the petitioner has submitted that the decree passed by the Court was only with respect to the first prayer made in the suit and since the alternative relief would be deemed to have been declined, therefore, the sale deed cannot be executed with respect to the alternative relief. He further submitted that issue No.1 was specific with regard to the agreement to sell and, therefore, the Executing Court erred in ordering the execution of the sale deed with regard to the land measuring 21 kanals 12 marlas i.e. undivided share of the property from the joint land. He further submitted that in the agreement to sell, khewat number has not been mentioned and only khasra number has been mentioned and, therefore, there cannot be any decree beyond what has been agreed to.

On the other hand, learned counsel for the respondent has pointed out that the entire land including the land mentioned in the agreement to sell is part of the joint khewat. He further pointed out that once the party agrees to purchase the land comprised in specific khasra numbers in a joint khata, the sale of such property would always be a share in the undivided joint khata. He further read over the statement of the Judgment Debtor, wherein he deposed that the entire land of the khata is of the same value and there is no difference in the price.

As regards the first argument of the learned counsel, it is suffice to notice that while filing the suit, the plaintiff had made three following prayers:-

- (i) Decree for possession of specific khasra numbers.

- (ii) In the alternative, decree for possession of land agreed to be sold out of joint khata.
- (iii) For alternative, relief of possession.

Learned Trial Court agreed that the Decree Holder-respondent granted the relief of specific performance of the agreement to sell. Learned Court while concluding also ordered that the plaintiff shall be entitled to the specific performance of the property free from all encumbrances. Learned Court only declined the relief of refund of the amount on the ground that since primary relief has been granted. The argument of the learned counsel that such primary relief would only be confined to the first part of the prayer, cannot be accepted. It is well settled that even if a co-owner agrees to sell the land comprised in specific killa number or khasra numbers in a joint khata, the sale would always be sale of an undivided share in the entire property. No co-owner has a right to sell a specific portion of the property in a joint khata because every co-owner is deemed to be co-owner of every part of the land.

Second argument of the learned counsel is that only issue No.1 was decreed and, therefore, issue No.1 was not covering alternative relief in first prayer made in the plaint. In the considered opinion of this court, the argument has a basic fallacy. Learned counsel has failed to appreciate that once the property is part of the joint khewat, then the agreement to sell in real terms is an agreement for undivided share in the joint khata. Still further, as contended by the learned counsel for the respondent, it is the Judgment Debtor-petitioner who filed the review application with pointing out this fact to the Court and the aforesaid review application has been

dismissed for non-prosecution on 07.12.2013. Learned counsel for the petitioner could not point out whether such order was ever challenged.

The decree passed by the Court which has become final has to be given effect to. If the argument of the learned counsel for the petitioner is accepted, it would result in frustrating the decree. Such course would not be in the interest of justice. The Decree Holder has been held entitled to the ownership of the land measuring 21 kanals and 12 marlas. Such decree cannot be allowed to be frustrated.

In view of the aforesaid discussions, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

31.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No