

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

Civil Revision No.9178 of 2017.

Decided on:-February 16, 2018.

Sarabjit Singh.

.....Petitioner.

Versus

Kulbir Singh and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Pankaj Bali, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition under Article 227 of the Constitution of India for setting aside the order dated 30.10.2017 (Annexure P-4), whereby the executing Court i.e. Additional Civil Judge (Senior Division), Khanna has dismissed the objection-petition filed by the petitioner.

Briefly stated, the respondent No.1-plaintiff Kulbir Singh had filed a suit against respondent No.2-defendant Gurpreet Singh for specific performance of an agreement to sell dated 07.01.2005. The said suit was decreed in favour of the plaintiff vide judgment and decree dated 15.03.2010 passed by learned Additional Civil Judge (Senior Division), Khanna as the plaintiff had proved the execution of the agreement in question.

As per the decree, respondent No.2-defendant Gurpreet Singh was directed to execute and get the sale deed registered in favour of the

plaintiff qua the property in dispute as per the terms and conditions of agreement to sell dated 07.01.2005 within a period of three months from the date of passing of the decree. Till the execution and registration of sale deed in favour of the plaintiff, the defendant was restrained from alienating the property in dispute to any other person.

The respondent No.1-plaintiff had filed an execution petition of the judgment and decree dated 15.03.2010 passed by the trial Court. While the said execution was pending, the petitioner had filed objections in the execution proceedings stating therein that on 28.12.2009, respondent No.2-defendant Gurpreet with his own free consent, voluntarily and without any pressure entered into an agreement to sell in writing with petitioner-objector Sarabjit Singh regarding land measuring 0K- 6M i.e. 06/114 share out of land measuring 05K-14M comprised in Khata No.96/119, Rect. No.17 for a total sale consideration of Rs.33 lakhs. The agreement was executed in the presence of witnesses and at the time of entering into the said agreement, the respondent No.2 had received Rs.10 lakhs in cash from the petitioner. The petitioner was in possession of the suit property at the time of agreement to sell dated 28.12.2009 and had made construction by spending a huge amount on the suit property. He was using the suit property along with other property for running his society "Vishwash Anti Corruption and Human Rights Organisation" and was also running a centre "Vishwash's Home for Correction and Rehabilitation" since the time of execution of the agreement to sell dated 28.12.2009. As the respondent No.2-defendant had made breach of agreement to sell dated 28.12.2009, the petitioner-objector had filed a suit for

specific performance of the agreement to sell dated 28.12.2009 before the civil Court titled as “Sarabjit Singh Vs. Gurpreet Singh” which is pending before learned Civil Judge (Junior Division), Khanna.

The respondent No.1-plaintiff had filed reply to the objections taking preliminary objections that the objections are not maintainable and the objector had no *locus standi* to file objections in the execution proceedings as he has no right, title or interest in the property in dispute. In fact, the judgment-debtor and the petitioner-objector are in collusion with each other so as to defeat the valuable right accrued to the respondent-decree holder. The agreement dated 28.12.2009 is a fabricated document and rather, hit by the principle of *lis pendens*. The agreement to sell dated 28.12.2009 is not binding upon the respondent No.1-plaintiff-decree holder and he had denied that the possession was delivered to the petitioner-objector. However, when the decree holder came to know about the suit filed by the petitioner-objector, he had filed an application under Order 1 Rule 10 CPC which was allowed by the civil Court. The respondent No.2-defendant has executed a legal and valid agreement dated 01.01.2005 in a sound disposing mind which formed the basis for passing of the judgment and decree dated 15.03.2010 in favour of the respondent No.1-plaintiff. Since the alleged agreement to sell dated 28.12.2009 executed by respondent No.2 in favour of Sarabjit Singh was executed during the pendency of the civil suit titled as “Kulbir Singh Vs. Gurpreet Singh”, the said agreement is hit by the principle of *lis pendens* and is not a legal document in the eyes of law.

The objection petition filed by the petitioner was dismissed vide impugned order dated 30.10.2017 passed by the executing Court.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition impugning the order dated 30.10.2017 passed by the executing Court.

Learned counsel for the petitioner has argued that the petitioner is a bonafide purchaser of the suit property and there is no entry in the revenue record regarding any suit pending before the civil Court and, therefore, the agreement to sell dated 28.12.2009 was rightly entered between the parties. The objection petition of the petitioner, therefore, has wrongly been dismissed without framing the issues and without allowing the parties to lead their respective evidence. The objection petition has been dismissed summarily and the petitioner being bonafide purchaser of the suit property is entitled for the protection as he had purchased the suit property after paying a heavy sale consideration. The objection petition has wrongly been dismissed on flimsy grounds as the petitioner had purchased suit property during the pendency of civil suit No.341 dated 07.11.2005 and, therefore, action of the petitioner is hit by the principle of the *lis pendens*.

I have heard learned counsel for the petitioner.

The petitioner has projected his claim on the basis of agreement to sell dated 28.12.2009 executed between him and respondent No.2-defendant Gurpreet Singh for land measuring 6 Marlas for a total sale consideration of Rs.33 lakhs. It is not disputed that the respondent No.1-plaintiff had filed an execution of decree on the basis of judgment and decree

dated 15.03.2010, whereby respondent No.2-defendant was directed to execute the registered sale deed in favour of respondent No.1-plaintiff qua the suit property. The judgment and decree dated 15.03.2010 is based on agreement to sell dated 07.01.2005 and as per the decree, the judgment-debtor was required to get the sale deed executed within three months from the date of decree. At the same time, it has come on record that the agreement to sell dated 28.12.2009 was allegedly executed by respondent No.2-defendant in favour of the petitioner-objector during the pendency of the civil suit titled as “Kulbir Singh Vs. Gurpreet Singh”. Therefore, the agreement to sell dated 28.12.2009 is hit by the principle of *lis pendens*. The suit property which is subject matter of the decree dated 15.03.2010 is also being shown as property involved in the agreement to sell dated 28.12.2009, but in the said agreement there is no reference that the possession of the property was ever delivered to the petitioner by respondent No.2-defendant Gurpreet Singh. Therefore, the plea of the petitioner, that he was delivered possession of the suit property by respondent No.2 in terms of agreement to sell dated 28.12.2009, cannot be accepted.

Even otherwise, the respondent No.1-plaintiff in his reply to the objection petition has specifically stated that the moment the plaintiff-decree holder came to know about the suit filed by petitioner Sarabjit Singh against respondent No.2-defendant Gurpreet Singh, he had filed an application under Order 1 Rule 10 CPC which was allowed by the civil Court. Further, while filing the objection petition, the petitioner himself had stated that in order to get a decree of specific performance of the agreement to sell dated

28.12.2009, the petitioner had filed a civil suit titled as “Sarabjit Singh Vs. Gurpreet Singh” which is pending before the Civil Judge (Junior Division), Khanna and in the said suit, the respondent No.2-defendant had filed an application under Order 1 Rule 10 CPC which was allowed. Therefore, this Court finds that since the petitioner-objector had entered into the agreement to sell dated 28.12.2009 with respondent No.2-defendant Gurpreet Singh during the pendency of civil suit No.341 of 07.11.2005, the agreement to sell dated 28.12.2009 is hit by the principle of *lis pendens*. As such, there is no illegality in the impugned order dated 30.10.2017 passed by the executing Court, whereby the objection petition filed by the petitioner-objector was dismissed.

Accordingly, the impugned order dated 30.10.2017 (Annexure P-4) passed by learned Additional Civil Judge (Senior Division), Khanna is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

February 16, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No