

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ESA No. 19 of 2010 (O&M)
Date of Decision : 04.12.2018

Shayam Sunder @ Shyam Sunder AggarwalAppellant

Versus

Sher Pal and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Alok Mittal, Advocate
for the appellant.

Mr. Zorawar Singh Chauhan, Advocate
for respondent no. 3.

None for respondent no. 4.

Surinder Gupta, J.

Heard.

In civil suit filed by Sushila (since deceased) now represented by legal representatives, a decree for recovery of ₹15,000/- with interest @ 6% per annum from the date of filing of the suit till realization of the decretal amount was passed on 05.11.2004. In appeal filed by the decree holder, Ist Appellate Court modified the decree and allowed recovery of ₹50,000/- as principal amount and ₹11,000/- as interest with costs and *pendente lite* interest @ 24% per annum. During execution the decree holder got the property of judgment debtor (JD) attached and it was also sold to the auction purchaser, namely, Manish son of Bhim Sain (respondent no. 4).

Appellant-Shyam Sunder @ Shyam Sunder Aggarwal filed objections against the attachment on the basis of agreement to sell regarding the property of JD dated 05.01.2001.

Admittedly, in the suit filed by the objector-appellant seeking the relief of specific performance of that agreement he has been allowed alternate relief for recovery of earnest money. Learned counsel for the appellant submits that the appeal against order of the trial Court was filed, which was dismissed and the decree passed in favour of the objector-appellant for recovery of earnest money became final. Hence, there is no decree of specific performance of agreement with regard to property of JD attached and sold in execution has been passed in his favour.

In view of above, the appellant is left with no right or *locus standi* to challenge the attachment and sale of the property of JD for the recovery of amount due against JD. He has separate remedy against the JD for the relief allowed in the suit filed by him.

This appeal has no merit and the same is dismissed.

December 04, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No