

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4012 of 2016 (O&M)

Date of Decision: November 21, 2018

M/s Beau Green Real Estate Private Limited

...Appellant

Versus

Bijender Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Suman Jain, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is at the instance of a subsequent vendee of the suit land purchased by way of sale deed dated 22.02.2007. The vendors had entered into an agreement with the respondent-plaintiff vide agreement to sell dated 23.06.2005. Since some share of the minor was involved, the guardian court granted the permission on 02.01.2006. The stipulated date for execution and registration of the sale deed was 15.10.2005. The suit was filed on 12.01.2006. However, during the pendency of the suit, vendors sold the land to the other persons. Plaintiff instituted the suit against the vendors without impleading the subsequent vendee, which resulted into decree. No appeal was filed by the vendors. Since the appellant had stepped into the shoes of vendors, filed third party objections qua the execution of the judgment and decree as per the provisions of Order 21 Rule 103 CPC, which were dismissed. Against the dismissal of the objections, two revisions were filed which were also dismissed. The dismissal of the same had a trapping of the decree. Instead of availing the remedy of appeal under the provisions of Order 21 Rule 103

CPC, appellant filed appeal by seeking relief before the Lower Appellate Court against the judgment and decree dated 12.10.2010 rendered in a suit for specific performance. The same has been dismissed to be not maintainable.

Mr. Suman Jain, learned counsel representing the appellant submitted that the appellant could not have been non-suited on this ground and the appeal should have been decided on merits as it was open for the appellant to avail the remedy of appeal against the dismissal of the objections or to file independent appeal.

I am afraid, the aforementioned argument is not sustainable, for, in the order passed in the revision, liberty was granted to avail the remedy of appeal under Order 21 Rule 103 CPC and not under Section 96 CPC being third party appeal. It is a matter of record that the leave of the court was sought prior to the order passed by this court but that fact was not disclosed to this court. The litigants should not be permitted to avail remedy as per their own choice and circumvent the statutory provisions of law.

The findings of fact arrived at by the Lower Appellate Court in non-suited the appellant on this ground cannot be faulted with. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No