

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2703 of 2018

Date of Decision.27.05.2019

Vimla Rani @ Bimla Rani and another

...Petitioners

Vs

Manjit Kaur (since deceased) through LRs

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate
for the petitioners.

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AMIT RAWAL J. (ORAL)

The petitioners-decree holders are aggrieved of the impugned order whereby the execution petition seeking execution of the judgment and decree dated 16.04.2001 has been dismissed by accepting the objections of the judgment debtors.

The petitioners-decree holders filed the suit bearing No.97 of 8.5.1998 for specific performance of agreement to sell dated 1.1.97. The aforementioned suit was decreed vide judgment and decree dated 16.4.2001 by passing following order:-

“It is hereby ordered that the suit of the plaintiffs is decreed for specific performance of the agreement to sell dated 1.1.1997. The defendant is directed to execute the sale deed of the suit land measuring 40 marlas in favour of the plaintiffs within two months from today. However, before getting the sale deed executed the plaintiffs can get the demarcation of the suit land with the help of defendant. If the defendant does not assist to the plaintiff then the plaintiffs can get the demarcation

of the suit land conducted with the help of revenue authority. After getting demarcation, the plaintiffs can take possession of the suit land then can get the sale deed executed in their favour on making payment of the remaining sale consideration.”

The petitioners filed execution application on 14.6.2001 as Execution Application No.33. Vide order dated 09.12.2002 (Annexure P-3), warrant of possession in respect of land measuring 40 marlas were issued. On receipt of report of some impediment, an application for granting police help was filed, which was allowed by the Executing Court vide order dated 19.03.2005 (Annexure P-4). Vide order dated 29.10.2005, the Executing Court sought assistance of SSP by sending report to the District Judge. The District Judge vide order dated 20.12.2005 refused the police help on the ground that plaintiffs could obtain the demarcation. Vide order dated 10.05.2007 (Annexure P-6), Kanungo was appointed and the land was demarcated. The demarcation report dated 1.9.2007 (Annexure P-7) was submitted. It was alleged that on 27.2.2008, challan was issued whereby decree holders had to deposit the balance sale consideration of ₹3,25,000/- in the treasury and the same was deposited. However, application was filed for obtaining warrants of possession, resulting into filing of objections dated 20.09.2017 (Annexure P-9).

Mr. Aakash Singla, learned counsel appearing on behalf of the petitioners submitted that once the demarcation report has been submitted, the Court below could not have accepted the objections

and dismissed the execution petition being filed after more than 10 years. On 14.08.2010, application was filed for issuance of warrants of possession which was dismissed as withdrawn on 4.1.2011 with liberty to file fresh one. On 18.01.2011 fresh execution application was filed but the same was dismissed in default in 2014 and restored in 2016. This would not be an impediment for the petitioners to seek execution particularly when the demarcation report has been accepted. There was no mandate in the decree to obtain demarcation, as the identity of the property was not in dispute, thus, urges this Court for setting aside the order under challenge.

In pursuance of notice of motion order issued on 26.04.2018, as per office report of 14.11.2018, respondent Nos.1A (a) to (c) have been duly served but nobody had appeared since then.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit. The pith and substance of the decree revealed that the sale could not have been executed without demarcation of the land. Despite being aware of the same, the petitioners chose to file the execution petition on 14.6.2001 within two months but did not obtain demarcation. The facts noticed above would reveal that warrant of possession was returned back with request for police help, which was rejected and finally demarcation report came on record on 01.09.2007. It is only thereafter, petitioners deposited balance amount. The readiness and willingness has to be continuous from the date of agreement till filing of the suit, during the pendency of the suit till execution. Section 28 of the Specific Relief Act enables the

party for declaring the decree to be inexecutable for breach of any of the conditions in the decree.

In view of such circumstances, I do not find any illegality and infirmity in the order challenge. No ground for interference is made out. Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 27, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No