

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3436 of 2015 (O&M)

Date of decision : 05.11.2019

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Sewa Singh (since deceased) through his LRs
Reshma Devi

.....Petitioner

vs.

Subhash Chander and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vivek Aggarwal, Advocate for the petitioner.

Mr. S.S. Dinarpur, Advocate for respondent No.2.

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H. S. Madaan, J.

This revision petition is directed against order dated 16.3.2015 passed by Additional Civil Judge (Senior Division), Kurukshetra, vide which execution application filed by plaintiff – decree holder Sewa Singh was dismissed being fully satisfied, however, granting him liberty to seek partition of the suit property in accordance with law.

Briefly stated, facts of the case are that plaintiff Sewa Singh had brought a suit against defendants Subhash Chander and Mewa Singh, seeking specific performance of agreement to sell dated 28.2.1997 directing defendant No.1 to execute and get registered the

sale deed in his favour as per agreement alongwith delivery of possession with a direction to remove the construction raised by the defendants and to restore it to its original position; in the alternative, seeking a decree for recovery of Rs.80,000/- alongwith interest and/or grant of permanent injunction restraining the defendants from alienating, transferring, mortgaging, leasing or raising any construction thereon and further for declaring document, if any, in favour of defendant No.2 as null and void.

After contest by the defendants, the said civil suit bearing No. 210 of 2008 was decreed by the trial Court of Civil Judge (Junior Division), Kurukshetra and a decree for specific performance of agreement was passed in favour of the plaintiff and against defendant No.1 directing him to execute a sale deed in favour of the plaintiff on receipt of balance amount, if any, within a period of two months from the date of judgment alongwith a decree of possession directing defendant No.2 to hand over peaceful possession of land to plaintiff within two months from the date of the judgment, failing which, the plaintiff could get the sale deed executed and possession delivered through court. The decree was challenged by way of appeal filed by the defendants but the said appeal was dismissed by Additional District Judge, Kurukshetra, vide judgment and decree dated 30.8.2008. Mewa Singh had filed a Regular Second Appeal before this Court, which was also dismissed vide judgment dated 29.10.2010. The decree holder filed an execution application, where respondent-judgment debtors appeared and submitted objections. Those objections were dismissed by the Executing Court vide order

dated 10.12.2012. The judgment debtor had filed a Civil Appeal No. 12 of 2013 titled 'Mewa Singh vs. Sewa Singh and another', which was dismissed by Additional District Judge, Kurukshetra, vide order dated 25.4.2013. There counsel for appellant/judgment debtor No.2 had stated that such appellant had no objection to the execution of the decree with regard to the specific performance of the agreement in respect of which sale deed was executed. Learned counsel for the respondent had stated that decree was in respect of 200 square yards of the land as in the relief clause, relief was sought with regard to the portion marked by letters ABCD, observing that the judgment and decree were only with regard to the specific performance of the agreement and not beyond that, whereas the decree holder was seeking execution for an area which was not subject matter of the agreement to sell, which fact had not been taken into consideration by the trial Court leading to passing of the impugned order which was set aside. The Executing Court of Additional Civil Judge (Senior Division), Kurukshetra, vide impugned order dated 16.3.2015 has observed that in this case the sale deed has already been executed and symbolic possession given to the decree holder but the decree holder did not seek partition of the suit property nor any such relief was granted by the lower court, while passing the judgment and decree dated 12.6.2008. Even after filing of the application for dismissal of the execution petition being fully satisfied, the decree holder had not bothered to seek amendment in the relief or to seek partition of the suit land. Therefore, the objections were allowed and execution petition was dismissed being fully satisfied. This order is under

challenge in the present revision petition.

I have heard learned counsel for the parties, besides going through the record.

Learned counsel for the revisionist has referred to judgment **Khazan Singh (D) by LRs vs. Gurbhajan Singh and others 2007 (2) RCR (Civil) 340,** in support of his contention that revision against the impugned order is maintainable.

On the other hand learned counsel for the respondent/ judgment debtors has referred to various judgments, first being, **Kashmir Singh vs. Tana and others 2000 (4) RCR (Civil) 6**, contending that a decree for joint possession can be executed by delivery of symbolic possession only and not actual possession and for taking actual possession partition is required to be sought. The other authorities referred to by him, were **Kumari Sandeep and another vs. Mohinder Singh and another 2009 (4) RCR (Civil) 513;** **Ram Kumar and another vs. Bhale Ram and others 1990 (2) RRR 133** and **Ashok Kumar vs. Kamaljit Singh 1995 (2) RRR 460, Ram Singh vs. Gurnam Singh and others 1990 (1) RRR 169** were also in that regard.

As it comes out from the record that the plaintiff Sewa Singh had brought a suit against the defendants in para No.1 contending that defendant No.1 is owner of ½ share of the plot situated in Ward No.8, Darra Kalan (Sapra Colony), under T.P. Scheme No. 7-A, total area 200 sq. yards i.e. 7 marlas and such defendant had entered into an agreement to sell his share with the plaintiff to the extent of 100 sq. yards being part of Khasra No.

221/47, for an amount of Rs.40,000/-. The trial Court had granted a decree for specific performance to the plaintiff, that means the decree could be granted regarding the area mentioned in the agreement and not more than that. However, the plaintiff is trying to twist the facts, so as to claim possession of the entire plot which could not be permitted. The Executing Court has rightly dismissed the execution application, as satisfied. If the plaintiff so desires, he can get the plot partitioned and get particular portion therefrom as his share, but he cannot be allowed to take the entire plot by distortion of facts and mis-interpretation of the judgment and decree passed by the courts. There is certainly no illegality or infirmity in the impugned order, much less apparent on the face of it. The order is certainly not perverse, which might have called for interference by this Court while exercising the revisional jurisdiction.

Finding no merit in the revision petition, the same stands dismissed.

5.11.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No