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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7183 of 2018
Date of Decision: 18.11.2019

Sunil Kumar

-Petitioner

Vs

Raman @ Sanju (since deceased) through LRs and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lajpat Sharma, Advocate,
for the petitioner.

Mr. Kulwinder Singh, Advocate, for
Mr. Swarn Tiwana, Advocate,
for respondent No.1.

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RAJ MOHAN SINGH, J. (ORAL)

Petitioner has preferred this revision petition against the order dated 20.08.2018 passed by Civil Judge (Junior Division), Kaithal vide which objections filed by respondents No.2 and 3 in the execution were accepted to the extent of their shares in the house.

Perusal of the record would show that the petitioner-decree holder filed a suit for specific performance on the basis of agreement to sell executed between him and Raman Kumar-judgment debtor.

The trial Court in para no.13 of the judgment held the

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following configurations in respect of entitlement of the parties:-

> *"13. The plaintiff has duly proved his case as he has examined deed writer who proved that on 6.10.2010 he has scribed Ex.P1 and Ex.P2. Further, on 6.10.2010, the witness Chand Ram PW-3 also proved that agreement to sell was entered into between the plaintiff and defendant and as per the terms of the agreement to sell the sale deed was to be executed on 10.4.2011 which was later on extended up to 10.10.2011. Hence, it is proved that the agreement to sell was entered on 6.10.2010. However, at the stage of arguments, learned counsel for the defendant argued that defendant is not owner of the suit property and there are other legal heirs of the father of defendant late Kanwar Bhan, who has right in suit property. Hence, the defendant cannot sale out the suit property in favour of the plaintiff. The plaintiff has not proved the ownership of the defendant over the suit property as only copy of assessment register has been filed, as per which late Kanwar Bhan has been shown as*

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owner of the suit property. The plaintiff has admitted that there are two sisters of defendant. The property in question is ancestral property and the defendant cannot sale out the suit property to the plaintiff without having any ownership right over the entire property. The relief of specific performance is a discretionary relief."

As a result of aforesaid findings, the trial Court decreed the suit of the plaintiff only to the extent of alternative relief of recovery of earnest money of Rs.6 lacs along with 9% interest from the date of filing of suit till final realization of the amount.

The aforesaid judgment came to be passed even after dismissal of the application filed by respondents No.2 and 3 under Order 1 Rule 10 CPC. The reason for passing alternative relief of recovery was only on the basis of the property having charged with entitlement of respondents No.2 and 3. The property was held to be ancestral.

Relief of specific performance being discretionary in nature was declined and it was held that the defendant cannot sell out the property to the plaintiff without having any ownership right qua the entire property.

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In execution of decree for alternative relief of recovery, the entire house cannot be put to attachment and auction without segregating interest of respondents No.2 and 3.

Precisely for that reason, the Executing Court has passed the impugned order, which in my considered opinion, cannot be held to be without jurisdiction or having suffered with any perversity.

This revision petition is accordingly, dismissed.

18.11.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No

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