

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ESA-22-2019 (O&M)

Date of Decision: 25.07.2019

Karnail Singh and others

... Petitioners

Vs.

Sardar Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Ms. Himani Kapila, Advocate
for the appellants.

RAMENDRA JAIN, J. (Oral)

3rd party objectors through this second appeal has laid challenge to order dated 15.03.2017 of the Executing Court, whereby their objections were dismissed and order dated 22.01.2019 of the Appellate Court thereby, affirming aforesaid order of the Executing Court, dismissing their appeal.

Briefly, respondent No.1 filed a suit for specific performance of agreement to sell dated 25.02.2005 against respondent No.2 and his attorney respondent No.3. The suit was dismissed by the trial Court vide judgment and decree dated 27.10.2008, but the same was decreed by the 1st Appellate Court, vide judgment and decree dated 30.09.2011, reversing the judgment of the trial Court. After its attaining finality, respondent No.1 filed a petition before the Executing Court for execution of the same. Pursuant thereto, the Executing Court got executed and registered sale deed in favour of respondent No.1 through Court. During the pendency of execution petition, the appellants filed 3rd party

objection. The same were dismissed by the Executing Court vide order dated 15.03.2017, and further affirmed by the Appellate Court vide order dated 22.01.2019.

Learned counsel for the appellants, *inter alia*, contends that the Executing Court and Appellate Court as well, failed to appreciate that the appellant-objector was declared owner of the entire properties left by Shingara Singh, who was not being heard alive, since, last more than 7 years and thus, was declared civilly dead vide judgment and decree dated 8.10.2013 in favour of the objectors. Shingara Singh being unmarried had died issue-less. Therefore, both the Courts below failed to appreciate that the judgment and decree dated 30.9.2011 in favour of respondent No.1-decree holder decreeing his suit for specific performance against respondents No.2 and 3 qua the property left by Shingara Singh was illegal, null and void having no binding effect upon the rights of the appellants.

Having been given thoughtful consideration to the submissions of learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow:

No question of law, much less substantial has been raised in the instant second appeal. Therefore, the same is held not maintainable.

Decretal of suit of respondent No.1 against respondents No.2 and 3 for specific performance was not a secret deal amongst them. The appellant-objectors were well aware about pendency of

the said suit and its decision on 30.9.2011; inasmuch as, the appellants-objector as AW-1 before the Executing Court admitted that he came to know about the power of attorney and agreement to sell in favour of respondent No.1 allegedly executed by respondent No.2 through respondent No.3 within 5-7 days of its execution. He was also aware about pendency of the suit for specific performance on the basis of agreement to sell filed by respondent No.1 against respondents No.2 and 3. Therefore, it is apparent that the appellant-objector at the very threshold was aware about the alleged transaction in between the respondents and pendency of suit for specific performance between them. But he did not choose to challenge the same for the reasons best known to him, which requires to draw an adverse inference against him that he did not do so, knowing well that transaction amongst the respondents was genuine and legal. More so, in case, appellant-objector had any objection to the claim of respondent No.1 which he claimed in his suit for specific performance against respondents No.2 and 3, he must have made some effort to become party in the same to contest it. Not doing so, has dis-entitled the appellant-objector to file objections in the execution petition.

AW-2-Balwinder Singh examined by the objector testified that he did not know as to whether Sukhev Singh was residing at village Kokraan or had got the job of deceased Shingara Singh on compassionate ground. This witness did not specifically deny about shifting of Shingara Singh to Bihar or residence of Sukhdev Singh at village Kokraan. He merely showed his ignorance about the above-

said facts as is clear from the observations of the Executing Court in the impugned order. Contrary to it, RW-3-Darshan Singh attorney holder of respondent No.2 categorically admitted execution of agreement to sale deed dated 25.02.2005 which culminated into decretal of the suit of specific performance of respondent No.1.

I have carefully gone through the judgments of both the Courts below and find no illegality or perversity in the same.

The instant second appeal, being meritless, is dismissed.

25.07.2019
rajeev

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No