

Gurdev Kaur and others

.....Petitioners

Versus

Daljit Singh Dhingra and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. S.R. Mehta, Advocate
for the petitioners.Mr. Rakesh Chopra, Advocate
for the respondents/caveators.**NIRMALJIT KAUR, J.**

The present revision petition has been filed against the order dated 30.07.2019 passed in Execution First Appeal by the Execution Appellate Court, Patiala.

Learned counsel for the petitioners at the first instance states that his short prayer is that he should be granted protection during the pendency of Execution First Appeal bearing No.O.A.175/2019. The short prayer sounded very innocent but a perusal of the impugned order and with the assistance of learned counsel for the caveators, this Court found that the petitioners by way of the present litigation have simply tried to start a second round of litigation in spite of their having lost the earlier round of litigation upto the Hon'ble Apex Court.

A suit for possession by way of specific performance was filed on 22.05.2004 on the basis of agreement to sell dated 04.12.2003 in a suit instituted by respondent Nos.1 and 2 the then plaintiffs. After a specific performance of the above mentioned agreement, the said suit was decreed on 07.09.2010 by the Civil Judge (Senior Division), Patiala. The appeal

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filed against the same was dismissed by the Additional District Judge, Patiala on 23.02.2013, whereas, the regular second appeal bearing RSA No.2575 of 2013 was dismissed by this High Court, vide a detailed judgment dated 03.07.2017. Even, the review application filed against the order dated 03.07.2017 was dismissed by this High Court by another detailed order dated 07.09.2017. The SLP filed against the orders dated 03.07.2017 and 07.09.2017 too was dismissed on 09.01.2018. The matter did not rest there. Various objection petitions were filed at the behest of the petitioners and other defendants alleging that the sale deed executed and registered on 18.04.2016 by the decree holder was nullity. The said objection petitions were dismissed vide orders dated 04.08.2018, and 08.07.2019 passed by the Civil Judge (Junior Division), Patiala. The petitioners filed appeal against order dated 08.07.2019, before the District Judge, Patiala and in that appeal, prayer for interim stay was made. However, the said stay application was dismissed on 30.07.2019.

While praying for setting aside the order dated 30.07.2019 and asking for protection during the pendency of the appeal through the present petition, the argument raised by learned counsel for the petitioners was that no declaratory relief or a decree for cancellation of earlier two registered sale deeds dated 09.01.2004 has been obtained and therefore, in the existence of the earlier sale deeds, the present sale deed as executed by the decree holder is a nullity. However, as noticed by this Court at the very beginning of the order, this is nothing but second round of litigation started by the petitioners only to defeat the decree passed in favour of the respondent/decreed holder and as upheld by this High Court and the Hon'ble

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Hon'ble Apex Court are not applicable to the facts of the present case as the alleged sale deeds have already been held to be sham transaction. Observations of the trial Court in order dated 07.09.2010 in the suit for possession filed by respondents/defendant Nos.1 and 2 reads as under:-

“Such material contradictions lead to the conclusion that no valid consideration has been passed in such sale deeds. These sale deeds were prepared by the defendants in order to escape from the liability arising out of agreement dated 04.12.2003. The defendants No.2 to 4 cannot be held to be bona fide purchasers of the suit property for valuable consideration and without notice of the rights of the plaintiffs therein.

Thereafter, the Appellate Court while dismissing the appeal filed against the order held that the agreements Ex.D8 and D9 on the basis of which these sale deeds were offered are forged and fabricated documents.

The High Court while dismissing the RSA No.2575 of 2013 on 03.07.2017 filed against the above two judgments and decree further held that:

“Further, in view of the fact that this Court has already agreed with the findings of the courts below, that the appellants and the late defendant No.1, in order to save the property from being sold to the plaintiffs, fabricated the agreements dated 15.05.2003 and 17.09.2003, the appellants cannot be held to be bona fide purchaser of the suit land.”

In these circumstances, the argument of learned counsel for the petitioners who had already been heard qua Ex.D8 and Ex.D9 and a specific finding has been recorded that they were fabricated documents cannot now turn around and seek permanent injunction on the ground that the respondents/plaintiffs have not got two registered sale deeds set aside till

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date.

Moreover, the sale deed dated 18.04.2016 by the decree holder has already been executed in pursuance to the decree by the petitioners, which is upheld uptill the Hon'ble Apex Court. Hence, such interim protection not to dispossess him cannot be granted. Refusal to hand over the possession on one pretext or the other is nothing but contemptuous in itself of the decree which has attained finality. Dismissed with costs of ₹50,000/- to be paid to the plaintiff.

Pending miscellaneous application(s), if any, stands disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

20.08.2019
sandeep

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No