

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

1. **CR No.169 of 2020(O&M)**

Date of decision: 6.2.2020

Salim KhanPetitioner

VERSUS

Kulbhushan Kumar and anotherRespondents

2. **CR No.204 of 2020(O&M)**

Salim KhanPetitioner

VERSUS

Kulbhushan Kumar and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Santosh Sharma, and
Mr. Sham Lal Bhalla, Advocates for the petitioner.

REKHA MITTAL, J.

CM No.2705-CII of 2020
In CR No.169 of 2020

Heard.

Allowed as prayed for.

Documents Annexure P-6 to P-8 are taken on record subject
to just exceptions.

Disposed of accordingly.

CR Nos.169 and 204 of 2020

This order will dispose of CR Nos.169 and 204 of 2020 as
identical questions of law and fact are involved for adjudication. For
facility of reference, facts are taken from CR No.169 of 2020.

Challenge in the present petition has been directed against order dated 12.12.2019 passed by the Additional Civil Judge (Senior Division), Ludhiana whereby application filed by the petitioner/defendant No.2 under Section 28 of the Specific Relief Act, 1963 to rescind the agreement to sell dated 23.02.2004 has been dismissed.

A brief backdrop of the case is that respondent No.1/plaintiff filed suit for possession by way of specific performance of agreement to sell dated 23.02.2004 executed by Sakhir Chand (since deceased) – respondent No.2 with further prayer for grant of permanent injunction restraining defendants from alienating the suit property except to the plaintiff. In the said suit, the plaintiff also sought declaration that sale deed bearing vasika No.7007 dated 21.07.2004 executed by defendant No.1 in favour of the petitioner is illegal, null and void and has no value in the eye of law. The suit was decreed by the trial Court vide judgment and decree dated 15.03.2014 and copy of the decree sheet is Annexure P-1. The petitioner filed appeal against the decree passed by the trial Court but the same was dismissed on 26.09.2015. The petitioner has filed Regular Second Appeal before this Court and the same is pending decision. After dismissal of first appeal on 26.09.2015, respondent No.1/deGREE holder filed application for execution of the decree on 03.10.2015 wherein it was averred that decree holder is ready to deposit the sale consideration, earlier it was not deposited as the appeals were pending.

The petitioner filed application to rescind the agreement to sell dated 23.02.2004 by invoking Section 28 of the Act and the same was dismissed by the trial Court vide order impugned.

Counsel for the petitioner would argue that the decree holder did not deposit balance sale consideration within the period stipulated in

the decree dated 15.03.2014. In appeal filed by the petitioner, there was no stay against execution of the decree passed by the trial Court. He would inform that in the regular second appeal pending before the High Court, notice of motion has been issued but again there is no stay granted by the Court. It is argued with vehemence that as the respondent/decreed holder neither deposited the balance sale consideration within the period stipulated in the decree nor at the time of filing application for execution in October 2015 and he filed application seeking permission to deposit the balance sale consideration and extension of time in 2018, the Court has committed a gross error and infirmity by dismissing application of the petitioner and allowing prayer of the respondent/decreed holder regarding deposit of balance sale consideration by relying upon judgments of this Court **Asha Rani Vs. Jasbir Singh, 2002(2) RCR (Civil) 530** and **Gurdit Vs. Jagjit Singh, 1988(1) RRR 519**, decided in view of peculiar facts and circumstances of the given cases. It is further argued that though the petitioner is a purchaser pendente lite but balance sale consideration is directed to be paid to the petitioner who was defendant No.2 in the suit.

Before advertent to the submissions made by counsel for the petitioner, it is appropriate to note relevant extract from Section 28 of the Act that deals with rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed, reads thus:-

“(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court

has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.”

Perusal of the aforesaid extract leaves no manner of doubt that legislature in its wisdom has conferred a right upon the vendor or lessor to have the contract rescinded in certain eventualities envisaged in the aforesaid provision. Indisputably, the petitioner is not the vendor of the respondent/plaintiff. On the contrary, he is a purchaser of suit property during pendency of litigation, therefore, sale in his favour is subject to outcome of the suit. In this view of the matter, application filed by the petitioner to rescind agreement to sell to which he is not a party cannot be maintained. Though the Court below has not examined this vital aspect of the matter but application filed by the petitioner is liable to be dismissed on this score alone. I would hasten to add that Sakhir Chand, vendor of the respondent/plaintiff never filed an application for rescinding the agreement on account of failure of the decree holder to deposit the balance sale consideration.

In view of what has been discussed hereinbefore, the petitions fail and are accordingly dismissed in limine.

FEBRUARY 6, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no