

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

CR-1989-2019 (O&M)
Date of decision : 06.01.2020

Nihal @ Nihal Singh

...Petitioner

Versus

Asmer Singh (since deceased) through his LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Singh Saini, Advocate for the petitioner.

Mr. Sanjay Mittal, Advocate for LR's of respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Judgment Debtor is in the revision petition against the order passed by the Executing Court dated 13.02.2019 directing the Judgment Debtors to execute the sale deed in favour of the Decree Holders, consequent upon a decree for specific performance of agreement to sell.

Some facts are required to be noticed.

Plaintiff-respondent No.1 filed a suit for possession by way of specific performance of the contract of sale dated 17.05.2010 executed by defendant Nos.1 to 9 with respect to land measuring 98 kanals 11 marlas comprised in Khewat No.35, Khatauni No.37 and Khewat No.26/27 min, Khatauni No.27. The suit was contested by the defendants.

Learned trial Court decreed the suit filed by the plaintiff in entirety. In the pleadings, respondent No.1-plaintiff had given the details of

the land agreed to be sold, which is as under:-

“1. That the defendants contracted on 17th May, 2010 through an agreement in writing to alienate 96 kanal of agriculture land bearing khewat no. 35, khatoni no. 27, rect. no. 38, kila no. 11/2 (2-9), 12/2 (3-7), 19(8-0), 20(8-11), 22/1(4-0), total 5 kita measuring 26 kanal 16 marla and khewat no.26, khatoni no. 27, rect. no. 37, kila no. 3(8-0), 4 (7-19), 7(7-8), 8(8-0), 11(7-2), 12/1(3-9), 12/2 (3-13), 13(6-18), 14 (6-3), 15 (7-7), 16 (5-16), total kita 11 land measuring 71 kanal 15 marla grand total 98 kanal 11 marla having 12 acre of agriculture land including Haqdaran Shamlat, right of rasta, two tubewells and sprinkler set according to the land in village Didoli, Tehsil and Distt. Rewari. Defendant no.1 to 4 executed personally, defendant no. 5 to 9 executed to the said agreement on 17-5-2010 through their General Power of Attorney, Defendant no. 4 vide registered deed no. 969 dated 6-11-1995, from the plaintiff within 19-7-2010 at the rate of 7,75,000/- acre total amount Rs.93,00,000/- out of which the plaintiff had paid earnestly of Rs. 15,00,000/- having ownership in self and according to the jamabandi for the year 2003-2004. On the date of agreement to sale it is also agreed between the parties that in violation of the terms and condition of the agreement dated 17-5-2010, the plaintiff has right to execute a regular sale deed in his favour through the process of law and court. It is further agreed between the parties that defendants. would execute the sale deed in favour of the plaintiff on 19-7-2010 after receiving the balance of consideration amount at the cost of plaintiff. The defendants have undertakes that the above said property is free from all encumbrances. Copy of jamabandi and copy of agreement to sale are attached herewith.”

Defendant Nos.1 to 4 filed first appeal which was partially accepted and the decree passed by the trial Court was modified. It was ordered that the suit of the plaintiff shall stand decreed qua the share of defendant Nos.1 to 4 whereas the suit of the plaintiff against the share of defendant Nos.5 to 9 was dismissed. Operative part of the judgment passed by the learned First Appellate Court is extracted as under:-

“18. Keeping in view the sequel of aforesaid discussion and that agreement as well as receipt of the earnest money Rs.15 lacs is admitted by defendants thus it is held that relief of specific performance against defendants no.1 to 4 can be granted hence suit of plaintiff is ordered to be partly decreed qua the share of defendants no.1 to 4, hence they are directed to perform their part of contract and registered a decree in favour of plaintiff within three months to the extent of their share in the suit land subject to adjustment of the amount already received by them from plaintiff for sale consideration of the entire land whereas suit of plaintiff against the share of defendants no.5 to 9 dismissed. Therefore, appeal only qua the share of defendants no.5 to 9 stand allowed. The impugned judgment is accordingly modified and the appeal is partly allowed. Decree-sheet be prepared accordingly. Records of the appeal be consigned to record-room, whereas lower court record be sent back along with copy of this judgment.”

Respondent No.1-plaintiff has filed the Regular Second Appeal which is pending in this Court.

Respondent-plaintiff filed an application for execution of the decree passed by the First Appellate Court. Pursuant thereto, sale deed in favour of respondent No.1-plaintiff Decree Holder has been executed with

regard to the land measuring 36 kanals 2 marlas on 21.02.2019.

This Court has heard learned counsel for the parties at length.

Learned counsel for the petitioner-Judgment Debtor has submitted that the detail of the land was not given either in the agreement to sell or in the execution application. During the pendency of the suit, some land through 6 sale deeds has been transferred but the Executing Court has not adverted thereto. As per Order 21 Rule 34 CPC, it was incumbent upon the Executing Court to grant an opportunity to the Judgment Debtor to file his objections to the proposed draft sale deed. Hence, he submitted that serious prejudice has been caused to the petitioner.

On the other hand, learned counsel for the respondent-Decree Holder has submitted that the sale deed has been executed and registered in accordance with the judgment of the First Appellate Court and the petitioner-Judgment Debtor was given an opportunity as a copy of the draft sale deed was handed over to them on 15.02.2019 by the Executing Court while adjourning the case to 21.02.2019 but no objections were filed by the Judgment Debtors.

On consideration of the matter, this Court finds no substance in the present revision petition. On careful reading of the agreement to sell, it is apparent that Khewat and Khatauni numbers in which the land is comprised has been specified. While filing the suit, plaintiff has given rectangle numbers and killa numbers apart from Khewat and Khatauni numbers. The trial Court, as noticed above, decreed the suit in entirety which, of course, was partially reversed by the First Appellate Court. The First Appellate Court modified the decree and granted the decree for

possession by way of specific performance of the agreement to sell with respect to the shares of defendant Nos.1 to 4 only. A photocopy of the sale deed has been produced by the learned counsel for the Decree Holder which is as per the share of Judgment Debtor Nos.1 to 4. In these circumstances, the arguments of the learned counsel that the detail of the land has not been given in the agreement to sell or in the execution application has no substance particularly when the sale deed has been executed in accordance with the decree passed by the learned First Appellate Court.

As regards second submission, it may be noticed and is not disputed by the learned counsel for the petitioner, that aforesaid 6 sale deeds which have been executed are during the pendency of the suit. Hence, such sale deeds are governed by the rule of lis pendens. Therefore, the aforesaid sale deeds become subservient to the decree passed by the Court.

As regards last submission, it appears to be attractive in first blush, however, on careful perusal, found without substance. First of all, the rules of procedure are for advancing the cause of justice and not for scuttling the same. Still further, on reading of the daily orders passed by the Executing Court dated 15.02.2019 and 21.02.2019, it is apparent that a copy of the draft sale deed was handed over to the learned counsel appearing on behalf of the Judgment Debtor on 15.02.2019 itself while adjourning the case to 21.02.2019. On 21.02.2019, learned counsel appearing for the Judgment Debtor neither filed any objection nor sought time for filing the objection. In such circumstances, substantive procedure as laid down in Order 21 Rule 34 CPC stands complied with. In any case, this Court has called upon learned counsel for the Judgment Debtor to show any prejudice.

Learned counsel for the petitioner failed to draw attention of the Court to any prejudice caused to the Judgment Debtor.

In view thereof, there is no ground to interfere.

Accordingly, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No