

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

Civil Revision No.1993 of 2020
Date of Decision:- 6.7.2020

Kamal Chopra ... Petitioner

Versus

Om Parkash ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sanjay Majithia, Senior Advocate with
Mr. Shailendra Sharma, Advocate.

*(the aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in Virtual Court)*

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 6.3.2020 vide which the learned Civil Judge (Junior Division), Hoshiarpur has ordered for setting aside the sale deed executed in favour of the petitioner/plaintiff pursuant to judgment and decree dated 22.5.2018.
2. A few facts necessary to notice for disposal of this petition are that the plaintiff filed a suit for specific performance of the agreement to sell dated 3.5.2010, which was decreed in his favour vide judgment and decree dated 22.5.2018.
3. The decree holder, thereafter, filed an execution application on 23.7.2018 pursuant to which the sale deed was got registered under orders of Court dated 3.12.2018. However, before filing of the execution application, the defendant had filed an appeal in the Court of District Judge on 3.7.2018

challenging judgment and decree dated 22.5.2018 wherein the impugned judgment and decree dated 22.5.2018 was stayed. It appears that the factum of stay of the said decree was never conveyed to the petitioner-plaintiff.

4. Further in the execution application, when the executing Court called for the report of Ahlmad of the Court of Civil Judge (Junior Division), Hoshiarpur, the said Ahlmad made the following report on 16.8.2018 :-

“Madam,

Respectfully, it is submitted that judgment and decree sheet dated 22.5.2018 by this court is attached herewith. Appeal is pending in the court of Sh. S.K.Singh, ADJ, Hoshiarpur. But there is no stay on it till date.

Vipan Kuma, 16.8.2018.”

5. While relying upon the aforesaid report, the executing Court went ahead and the sale deed came to be registered. Thereafter, an application dated 5.12.2018 (Annexure P-4) was filed on behalf the defendant-JD under Section 151 CPC seeking setting aside of the sale deed on the ground that the decree had already been stayed. Reply (Annexure P-5) was filed by the plaintiff. The learned lower Court vide impugned order dated 6.3.2020 ordered for setting aside the sale deed in question.
6. The learned counsel for the petitioner has submitted that the lower Court fell in error in setting aside the sale deed despite the fact that the stay order in question had never been communicated to the plaintiff. The learned counsel has relied upon a judgment of this Court reported as AIR 1980 P&H 150 titled as Deep Chand Vs. Krishan Datt to contend that it is not in each and every case of omission of conveyance of stay order that the sale deed in question is to be set aside and that each case has to be examined on the basis

of its own facts and circumstances. The learned counsel has further submitted that setting aside of the sale deed in question would result in irreparable loss to the petitioner inasmuch as he has paid a considerable amount towards the balance sale consideration and towards the registration charges and further he would also be required to pay the rent as he was earlier a tenant in the premises in question.

7. I have considered the aforesaid submissions addressed before this Court.
8. It is apparently a case where the sale deed came to be executed despite stay order on account of a material lapse on part of the Ahlmad who furnished an incorrect report to the effect that there was no stay of the judgment and decree in question. In such circumstances, when the defendant cannot be blamed for having furnished an incorrect information, the interest of justice certainly demanded that the sale deed in question be set aside particularly when the matter is yet to attain finality and appeal is still pending.
9. Keeping in view the law laid down by Hon'ble Apex Court in 1967 SC 1386 – Mulraj vs. Murti Raghunathji Maharaj, this Court does not find any valid ground for setting aside the impugned order and the same is hereby upheld. However, since the sale deed in question has been set aside, it is directed that the balance sale consideration which must have been deposited by the plaintiff at the time of registration of the sale deed be returned to the petitioner. Further, it is ordered that the expenses incurred by the petitioner for purchase of stamp papers and registration charges be returned to the petitioner. The Deputy Commissioner, Hoshiarpur shall ensure that the needful is got done in this regard for return of the stamp duty/registration charges.

10.The petition stands dismissed with the aforesaid clarifications.

6.7.2020

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No