

RA-RS-86-2019 (O&M)
in
RSA-1338-1986

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

RA-RS-86-2019 (O&M)
in
RSA-1338-1986
Date of decision: 16.01.2020

Ishwar Chand (died) through L.Rs

.....Appellant

Versus

Phooli Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Rajesh Narang, Advocate for the review applicant

ANIL KSHETARPAL, J. (ORAL)

Regular Second Appeal was disposed of in terms of compromise dated 24.8.2011 and the Court had passed an order setting aside the decree passed by the First Appellate Court. Applicant (who was not a party to the appeal or deed of settlement) filed an application contending that he is owner of the property. The aforesaid application was dismissed by the Court vide order dated 3.10.2013 which is extracted as under:-

“The second appeal in RSA No.1338 of 1986 was disposed of in terms of compromise and the Court had passed an order on 24.08.2011 and this Court had set aside the decree passed by the Appellate Court and secured to the plaintiff-appellant a decree

for specific performance. The Court recorded the fact that the plaintiff appellant should pay balance of sale consideration of ` 20 lacs to the defendant on 20.10.2011 and after the receipt of the amount, the defendant/respondent was to execute the sale deed in his favour in relation to the property in dispute. The appeal was, therefore, allowed on 24.08.2011.

The application has been filed by a third party contending that he has got title to the property and the defendant, who has allowed for a decree for specific performance was not competent to sell the property since the defendant was not the owner. It is a fundamental position of law that a suit for specific performance is not a suit for title. A person, who holds an agreement is entitled to secure a sale deed on that basis, if he is able to establish his readiness and willingness. A third party, who may be affected by such a sale cannot thwart a decree from being passed and will have right to seek for appropriate remedy in an independent suit.

An impleadment sought at the instance of a third party after the disposal of the appeal is incompetent. The applications filed for stay, reopening the case and for impleadment are

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dismissed.”

Now another application has been filed seeking review of order dated 24.8.2011. Admittedly, applicant was not party to the appeal. Application for impleadment of the applicant has already been dismissed by order dated 3.10.2013.

Learned counsel for the applicant contends that the compromise decree has been obtained by playing fraud. He, hence, submitted that review application is maintainable.

This Court has considered the submission, however, finds no substance therein. Since applicant is not a party either to the appeal or to the compromise decree, hence, he has a right to file a separate suit to challenge the same. This is what was observed in the order dated 3.10.2013. Learned counsel for the applicant was requested to assist the Court as to whether review of a review order already passed is maintainable. Learned counsel for the applicant failed to convince the Court. In view thereof, the present application is dismissed.

There is delay of 2046 day in filing of the present review application. In view of the order on merits, no further order is required to be passed.

16.01.2020
rekha
Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE
Yes / No
Yes / No