

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 6228 of 2018 (O&M)

Reserved on : 29.11.2021

Date of pronouncement : 3.12.2021

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Ashok Kumar

.....Petitioner

vs.

Swaran Bansal and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Amit Jain, Senior Advocate with
Mr. Dhruv Mittal, Advocate for the petitioner.

Mr. Aman Bahri, Advocate for the respondents.

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H. S. Madaan, J.

1. This revision petition is directed against order dated 2.2.2018 and sale deed dated 7.2.2018, executed in pursuance of said order passed by Civil Judge (Senior Division), Chandigarh.

2. Briefly stated, facts of the case, as per case of the revisionist, are that initially Smt. Swaran Bansal had been in occupation of shop No. 156/6, Old Ropar Road, Manimajra as a tenant under Sh. Ram Chander and his wife Smt. Lajwanti. Both of them had initiated ejectment proceedings against Smt. Swaran Bansal – tenant. However, Sh. Ram Chander died. He had bequeathed shop

in question to his wife Smt. Lajwanti. Smt. Lajwanti entered into an agreement to sell the shop in question with tenant Smt. Swaran Bansal on 13.11.2001. Smt. Lajwanti died on 18.1.2002, leaving behind legal heirs i.e. Ashok Kumar etc. The plaintiff-tenant had brought a suit for grant of specific performance of agreement to sell. That suit was dismissed by Civil Judge (Junior Division), Chandigarh. However, on an appeal having been filed by the plaintiff, the same was allowed by the Additional District Judge, Chandigarh. An execution application was filed by the plaintiff, where defendants – JDs appeared and filed objections, which were partly allowed. The defendants - JDs challenged such order dismissing their objections in part, by way of filing a revision petition before the High Court. However, that revision petition bearing CR No. 7343 of 2015, was withdrawn with liberty to file fresh objections, since the respondent-plaintiff had made a statement that she had withdrawn proposed sale deed in entirety and filed fresh proposed sale deed. The Executing Court without comparing the proposed sale deed with the decree, had passed the impugned order dated 2.2.2018, copy of which being Annexure P-6.

3. Feeling aggrieved, the JD – defendant Ashok Kumar, has brought the present revision petition, notice of which was given to the respondent-plaintiff – decree holder.

4. I have heard learned counsel for the revisionist - JD, as well as counsel for the respondent -decree holder - plaintiff, besides going through the record and I find that the revision petition is

without any merit.

5. This is an admitted fact that earlier respondent- decree holder plaintiff, had been in possession of the shop in question as tenant and subsequently, she had agreed to purchase the shop from the landlords by way of agreement to sell dated 13.11.2001, copy Annexure P-1. Since the other party was not coming forward to execute the sale deed, plaintiff brought a suit for grant of specific performance, which though was dismissed by the trial Court but on an appeal having been filed, the suit was decreed and specific performance of agreement to sell was allowed. Admittedly, the said judgment passed by Additional District judge, Chandigarh, has attained finality.

6. The dispute between the parties is mainly as to whether roof of the shop in question is subject matter of the transfer or not. According to the revisionist, it is not, whereas as per case of the respondent – decree holder the transfer includes roof also. Here the reference to judgment passed by Additional District Judge, Chandigarh, Annexure R-1 is very relevant and necessary. In para No. 46 to 49 of the judgment, this aspect has been dealt in details, coming to the conclusion that the agreement was with regard to the entire shop and not ground floor only.

7. Feeling aggrieved by that judgment, the defendants had preferred a Regular Second Appeal before this Court, the said appeal bearing RSA 2110 of 2011, was dismissed vide judgment dated 13.5.2011, copy Annexure R-3. A perusal of the judgment goes to

show that the appellants had not agitated this point specifically and their appeal had been dismissed. The matter had gone to the Apex Court also since the defendants had filed a Special Leave Petition there, but the said petition was dismissed vide order dated 8.11.2011 copy of which being Annexure R-4. With judgment passed by learned Additional District Judge, Chandigarh, having been affirmed upto the Apex Court, now it is not open to the defendants to re-agitate the matter that roof of the shop in question was not the subject matter of agreement to sell and was not intended to be transferred to the plaintiff. The argument advanced by learned counsel for the revisionist that the observations made in para Nos. 46 to 49 are not reflected in the decree passed, as such cannot be taken into consideration, lacks merit. With a clear finding having been given by learned Additional District Judge and judgment having attained finality, the parties are bound by such finding and defendants-JDs cannot wriggle out of the same.

8. Another fact to be taken into view is that when the plaintiff-decree holder had filed an execution application, the defendants had filed objections there, one of which was that since as per condition No. 13 of the rent agreement, entered into between the parties, the tenant was not entitled to use the roof of the shop and it was a tenanted premises, which had been agreed to be sold, vide agreement to sell dated 13.11.2001, therefore, the claim with regard to roof was not decreed and it cannot be mentioned in the sale deed to have been transferred to plaintiff-decree holder. This objection,

besides other objections filed, had been resisted by the plaintiff-decree holder.

9. After hearing the arguments, the Executing Court had dismissed the objections, observing that such objections had been taken by the JDs before the trial Court, as well as the Appellate Court of Additional District Judge, Chandigarh. Those were decided by the Appellate Court in judgment dated 16.2.2011 and after upholding the validity of the agreement to sell, it is observed that from perusal of the agreement to sell, it is clear that there is no question of agreement with regard to ground floor only and it is clear that agreement was with regard to entire shop and no question of ground floor only arises. With such observations being there, the objections could not be raised again in execution proceedings and were not maintainable.

10. Other objections were also dealt with in detail. The Executing Court observed that objections raised by JD No. 1 and 2 were false and frivolous amounting to abuse of process of law. In that way, the objections were dismissed with costs of Rs.12,500/- . The revision petition filed by defendant- JDs in this court, against that order had been withdrawn, with liberty to file objections to the amended draft sale deed. Such objections were however, not filed and the Executing Court on getting report of Ahlmad and finding that the draft sale deed was as per the decree dated 31.5.2015, had appointed Niab Nazir as Local Commissioner, for execution of the sale deed and to get it registered, who accordingly did so.

11. Again the defendants - JDs had defaulted in filing the objections to the amended draft sale deed. Then the JDs filed objections to the sale deed. However, on account of pendency of C.R. No. 5497 of 2018, further proceedings in the Executing Court remained stayed for some time, but thereafter on a clarification being given, the objections filed against the sale deed have been dismissed.

12. The controversy having been settled on account of judicial verdict coming in the form of observations by learned Additional District Judge, Chandigarh and such judgment having been upheld by this Court, as well as by the Hon'ble Apex Court, it cannot be re-opened now by way of filing objections time and again.

13. The impugned order passed, declining such objections, is quite detailed, well reasoned, based upon proper appraisal and correct interpretation of law. I do not find any illegality or infirmity with the impugned order apparent on the face of the same, which might have called for interference by this Court, while exercising the revisional jurisdiction.

14. The revision petition is found to be without any merit and is dismissed accordingly.

3.12.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No