

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

CR-108-2022 (O&M)

Date of decision: 30.08.2022

Chaman Devi

....Petitioner

Versus

Amar Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Mittal, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

In a suit for possession by way of specific performance of the agreement to sell, the court passed a decree for recovery of Rs.4,00,000/- alongwith interest at the rate of 9% per month. An amount of Rs.4,00,000/- was paid as earnest money to late Sh. Lalit Mohan @ Lilat Mohan. The petitioners herein are legal heirs of Sh.Lalit Mohan. They claim protection under Section 60(1)(ccc) of the Code of Civil Procedure, 1908, as added in the State of Punjab, which reads as under:-

“60. Property liable to attachment and sale in execution of decree.—(1) (ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him : Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recorded.”

The Executing Court has held that since the suit was for transfer of an immovable property and the refund has been ordered on account of an existing agreement to sell with regard to the aforesaid

property, hence, the protection under Section 60(1)(ccc) shall not be available. Assailing its correctness, the present revision petition has been filed.

Heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

Learned counsel representing the petitioner submits that the court has only passed a decree for recovery of amount of Rs.4,00,000/- with interest, hence, the property in question is not charged with the debt sought to be recovered. He further submits that the suit was filed after late Sh.Lalit Mohan died and the petitioners being legal heirs are entitled to protect their residential house under the aforesaid provision.

It is not in dispute that the suit was filed on the basis of an agreement to sell executed by late Sh.Lalit Mohan on 18.04.2011 for sale of half share of residential house bearing MC House Tax Unit Old No.3955, New No.6/386 measuring 17'8"x32'6" situated in Gali Golcha Wali, Bhadra Bazaar, Sirsa. The court found that the plaintiff is not entitled to decree for specific performance, however, after finding that the agreement to sell was entered into upon payment of Rs.4,00,000/-, the court ordered its refund alongwith interest. Thus, the suit property is charged with the debt sought to be recovered. Hence, the proviso to Section 60(1)(ccc) is not applicable in the present case. The argument of the learned counsel that it is a simplicitor recovery decree is not correct because the suit was originally, for specific performance of the agreement to sell. It is not in dispute that the petitioners have inherited

the property from Sh.Lalit Mohan and they being legal heirs are liable to pay the amount to the extent to which they have inherited the estate of the deceased.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

30.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE