

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

107

CR-3789-2016

Date of Decision: 27.05.2022.

Smt. Sarita

....Petitioner.

Versus

Parveen Kumar Saini and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate and
Mr. Rajinder Goel, Advocate for the petitioner.

Mr. N.C. Kinra, Advocate for the respondents.

Anil Kshetarpal, J. (Oral)

The decree holder assailed the correctness of order dated 20.01.2016 passed by the Executing Court.

Some facts are required to be noticed:-

Mam Chand Jain and Hem Chand Jain entered into an agreement to sell in favour of Smt. Sarita with respect to their respective share in the property on 10.01.1988 for a total sale consideration of Rs.94,500/-. Mam Chand Jain and Hem Chand Jain received Rs.10,000/- as the earnest money. Since the agreement to sell was not honoured, therefore, Smt. Sarita filed a suit for specific performance of the agreement to sell. Pending suit, legal representatives of Hem Chand Jain transferred the property in favour of Smt. Sarita regarding the half share of the suit property i.e. their half share. With regard to remaining half share, the suit is continuing. The trial as well as the First Appellate Court dismissed the suit. However, Regular Second Appeal filed before the High Court was allowed

and decree was made available on 13.10.2009 and he filed an application for execution along with an application for permission to deposit the amount on 13.10.2009. After receiving the office report, the Court permitted him to deposit the amount of Rs.42,500/- on 09.11.2009 alongwith the costs of Rs.10,000/-.

The Executing Court has dismissed the execution petition on the ground that the petitioner was required to deposit Rs.84,500/- alongwith the costs of Rs.10,000/-. The Executing Court has overlooked the fact that the legal heirs of Hem Chand Jain have already executed the sale deed in favour of Smt. Sarita on 07.01.1991.

Learned counsel representing the respondents does not dispute the aforesaid factual position. However, he submits that the decree holder filed an application for the extension of time.

There is a patent error in the order passed by the Executing Court. Once the sale deed with respect to half of the share of the suit property has already been executed, the petitioner was required to deposit the amount for remaining half share of the property.

Keeping in view the aforesaid facts, the order under challenge dated 20.01.2016 is set aside. The Executing Court is required to reddecide the execution petition after examining the record, within a period of two months, from today.

Parties through their counsel are directed to appear before the Executing Court on 05.07.2022.

(ANIL KSHETARPAL)
JUDGE

27.05.2022.

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No