

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6594 of 2017 (O&M)
Date of decision: 29.10.2022

Nazar Singh

..Petitioner

Versus

Bawa Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Varun Parkash, Advocate
for the petitioner.

Mr. Saurabh Singh, Advocate, for
Mr. Pardeep Bajaj, Advocate
for respondent no.1.

Ms. Natasha Munjal, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a decree holder. The decree for possession by way of specific performance of the agreement to sell was passed in his favour on 24.03.2015. The petitioner filed a suit claiming that Sh. Bawa Singh (respondent no.1 herein) entered into an agreement to sell on 24.09.2004, however, he did not come forward to execute the sale deed. While filing the suit, the petitioner impleaded Sh. Bawa Singh, as defendant no.1 and Sh. Manjit Singh as defendant no.2. Though, the trial court granted alternative relief of refund of the earnest money, however, the First Appellate Court, while accepting the appeal, passed a conditional decree of specific performance in favour of the petitioner. The petitioner was directed to pay Rs.1,50,000/- i.e. the balance sale consideration, within a period of 2 months. The certified copy of the judgment passed by the First Appellate Court was made available on 27.03.2015 and the amount was deposited on

20.05.2015. Defendant no.2-Sh. Manjit Singh, while filing the written statement claimed that he did not purchase the property in dispute.

2. Sh. Bawa Singh did not come forward to execute the sale deed despite deposit of the amount forcing the petitioner to file an execution petition in which Sh. Bawa Singh as well as Sh. Manjit Singh were impleaded as judgment debtor no.1 and 2, respectively. During the pendency of the execution petition, Smt. Surjit Kaur mother of Sh. Manjit Singh was added as a party and she claims that she is the subsequent purchaser of the suit property vide sale deed dated 26.10.2004. The court dismissed the execution petition on the ground that the petitioner has concealed material facts from the court. Challenging its correctness, the present revision petition has been filed.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. On the one hand, the learned counsel representing the petitioner submits that the rights flowing from the sale deed dated 26.10.2004 in favour of Smt. Surjit Kaur are subservient to the rights in favour of the petitioner as there exists a prior agreement to sell dated 24.09.2004 in his favour. Hence, he has a superior right over the property.

5. On the other hand, the learned counsel representing Smt. Surjit Kaur contends that she was never given an opportunity of hearing by the courts below.

6. Smt. Surjit Kaur does not claim any prior agreement to sell or any prior right over the property i.e. before 24.09.2004. She is a subsequent purchaser of the property though the sale deed in her favour was executed prior to the filing of the suit. Once there is an agreement to sell by

Sh. Bawa Singh in favour of the petitioner then all the subsequent transactions shall become subservient to the agreement. In such circumstances, Smt. Surjit Kaur could have come forward and got herself impleaded as a party by being more vigilant. This also shows lack of bonafides particularly in view of the fact that her son-Sh. Manjit Singh was a party to the suit as well as the first appeal throughout. Even he did not disclose that his mother has purchased the property. Once, legal rights have been conferred by a decree in favour of the plaintiff, then, they cannot be permitted to be defeated in such a manner.

7. Keeping in view the aforesaid facts, the order passed by the Executing Court is held unsustainable and thus, set aside.

8. The Executing Court is requested to proceed with the matter in accordance with law and justice.

9. The revision petition is allowed.

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

October 29, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*