

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

CR-954-2017 (O&M)

Date of decision: 16.08.2022

Pawan Kumar

....Petitioner

Versus

Muni Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner

Mr. Gagandeep Singh, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

CM-17663-CII-2019

Allowed as prayed for, subject to all the just exceptions. The applicants- Rajinder Kumar and Davinder Kumar, both sons of Sh. Batan Singh, are permitted to be impleaded as respondent no.2 and 3 in the present petition.

Amended memo of parties is taken on record.

Main case

The suit for possession by way of specific performance of the agreement to sell filed by the plaintiff has been decreed. The trial court has passed the decree for possession with respect to 9 marlas house located in land measuring 3 kanals and 15 marlas. In execution petition, the sale deed of the house in question has been registered in his favour. However, the executing court has refused to deliver possession to the petitioner on the ground that the property is undivided share in a joint khata.

Heard learned counsel representing the parties at length and with their able assistance perused the paperbook. The operative part of the decree passed in favour of the petitioner reads as under:-

“It is ordered that the suit of the plaintiff succeeds and the plaintiff is granted the relief of possession as owner by specific performance of agreement for sale dated 15.12.2008 executed by defendant in favour of plaintiff in respect of house out of khewat no.111, Khatoni no.184, khasra no.83(0-6), 281 (0-14), 223, (0-12), 282/1/2 (0-4), 282/2/2 (0-4), 289(1-15) kite 6 out of the total land 3 kanal 15 malras built in 1/8 share of defendant i.e 9 marlas as entered in the jamabandi for the year 2002-03 and situated at village Dadwan, Had Bast No.279, Tehsil and District Gurdaspur and bounded on the East house of Ami Chand, West plot of Avtar Singh, South house of Rakesh Kumar, North street and marked ABCD in the site plan, on the payment of balance amount of Rs.3 lacs within a week to be deposited. In the court and to get the sale deed registered at his own expenses. The suit is decreed with costs.”

Once the suit property is a house then its location and boundaries are well known. It is not the case of the judgment debtor that there is a large house out of which only 9 marlas was agreed to be sold. There was only one house allocated to the land measuring 3 kanals and 15 marlas. Once that is the position, the court erred in refusing to grant relief of possession, particularly, when the relief of possession has been granted in favour of the petitioner.

It may be noted here that the objections filed by the brother of judgment debtor were dismissed on 02.04.2013 and the judgment debtor never assailed its correctness. Hence, the order under challenge is set aside. The executing court is directed to deliver the possession to the petitioner.

The revision petition stands allowed.

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

16.08.2022
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No