

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

113

CR-1596-2020

Date of decision: 01.08.2022

Suresh Kumar @ Suresh Chand

.....Petitioner

Versus

Ram Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Fateh Saini, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking setting aside of the order dated 06.11.2019 (Annexure P-1) whereby his application under Order 44 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code') for permission to file an appeal as an indigent person was dismissed and he was ordered to affix the requisite Court fee failing which the appeal filed would be dismissed on the said ground. The petitioner is also impugning the order dated 10.12.2019 (Annexure P-2) vide which his appeal has been dismissed on account of non-compliance of the order dated 06.11.2019 (Annexure P-1) for non-fixing the Court fee.

Learned counsel *inter alia* contends that the respondents/plaintiffs sought a decree for symbolic possession by way of specific performance of contract as per agreement to sell dated 30.12.2011 qua the land measuring 2K-1M, being 51/115 shares of total land measuring 5K-15M, comprised in khewat No.716, khatoni No.855, Rect. No.25, Killa No.25/2 (5-15), situated within the revenue estate of village Babain, District Kurukshetra, as per jamabandi 2010-

11. The said suit was decreed in favour of the plaintiffs/respondents vide judgment and decree dated 23.11.2015 (Annexure P-3). The petitioner thereafter preferred an appeal against the judgment and decree and also filed an application for permission to pursue the appeal as an indigent person as he had no source of income to affix the Court fee. Learned counsel submits that the petitioner does not possess sufficient means nor is there any movable and immovable property in his name and hence he was unable to arrange money for affixing the ad valorem Court fee. Learned counsel submits that even in the report dated 11.12.2019 (Annexure P-6) it stood revealed that the petitioner owned only 18 marla 7 sarsai land which was less than 1 kanal and hence it was evident that the application moved by the petitioner under Order 44 Rule 1 read with Section 151 of the Code deserved to be allowed. Learned counsel in support of his submissions has placed reliance upon *A.A. Haja Muniuddin Vs. Indian Railways : 1992(4) SCC 736*; *Tata Checmical Limited Vs. Commissioner of Custom : (2015) 11 SC 628* and *Kartar Singh and another Vs. Rup Singh : 1990(2) PLR 448*.

I have heard learned counsel and perused the relevant material on record.

A perusal of the impugned order reveals that the respondents/plaintiffs placed on record certified copies of two sale deeds; one dated 10.10.2017 pertaining to sale of 2 marlas of land comprised in khewat No.764/717 and the other dated 30.12.2011 pertaining to sale of 6 kanal 14 marlas of total land comprised in khewats No.136, 238, 713 and 137. The petitioner sold the above

mentioned land for a total sale consideration of Rs.18,56,500. Another certified copy of sale deed dated 01.02.2016 registered on 02.02.2016, executed by Krishan Devi wife of the petitioner was also produced before the Courts below wherein it stood reflected that another piece of land had been sold by his wife for which she had received a sale consideration of Rs.9 lakhs. No doubt, one of the sale deeds dated 30.12.2011 was executed prior to the filing of the suit by the respondents/plaintiffs, however, two sale deeds dated 02.02.2016 and 10.10.2017 were executed only after the petitioner had preferred the appeal before the lower appellate Court. Though, it was vehemently argued by learned counsel that the two sale deeds dated 02.02.2016 and 10.10.2017 were indeed executed after filing of the appeal in question, however, they were not executed by the petitioner but by his wife. Learned counsel contended that sales executed by his wife would not lead to an inference that the petitioner had sufficient means much less any right over the sale consideration received by his wife. The contentions raised by the learned counsel though seems very attractive at the first instance, however, it is his own admitted case while stepping into the witness box as DW1 during trial that he had purchased a plot in the name of his wife for a sum of Rs.5,35,000/- on 30.12.2011. It needs to be pointed out that on 02.02.2016 sale deed had been executed by the petitioner's wife in respect of the same plot. Moreover, it is not even the case of the petitioner that there are strained relations between him and his wife. This Court in the circumstances agrees with the observations of the Courts below that the plot which was sold on 02.02.2016 was in fact of the petitioner though purchased by him in the name of his wife.

As a sequel to the above, this court does not find any error in the impugned orders.

Dismissed.

01.08.2022		(MANJARI NEHRU KAUL)
Vinay		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No