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

**CR-645-2022 (O&M)
Reserved on : 11.11.2022
Date of Decision: 30.11.2022**

Chemical and Mechanical Engineering Industries

....Petitioner

VERSUS

Raj Kumar and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anuj Garg, Advocate for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate for respondent Nos.1 and 2.

Mr. Aditya Pratap Duggal, Advocate for respondent No.6.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 10.01.2022 and short *zimni* order dated 10.01.2022.

The brief facts relevant to the present *lis* are that on 22.09.2009 one Manjit Singh, respondent No.3 herein, through his Power Attorney holder, Arun Gupta (respondent No.4 herein) entered into an agreement to sell in favour of respondent Nos.1 and 2 herein with respect to Industrial Shed No.D-3, Phase 5, Mohali measuring 2 kanals. On 03.08.2011 a suit for specific performance of the agreement to sell dated 22.09.2009 was filed by

respondent Nos.1 and 2 herein against respondent Nos.3 to 6. It is apt to mention that Meenakshi Gupta, respondent No.5 herein, is the wife of Arun Gupta, respondent No.4 herein. In the suit, a written statement was filed on behalf of defendant Nos.1 and 2 (Manjit Singh and Arun Gupta) by Arun Gupta on his own behalf and as a GPA holder of Manjit Singh. A separate written statement was filed by Meenakshi Gupta, respondent No.5 herein. In the written statement filed by Meenakshi Gupta a specific plea was raised that she was not a signatory to the agreement to sell dated 22.09.2009 and was not bound by the agreement to sell. It was further averred that she had 49% share in M/s Chemical and Mechanical Engineering Industries (petitioner herein) and that the property in dispute stood in the name of the petitioner herein and that she was a co-allottee to the extent of 49%. Vide judgment and decree dated 19.05.2015 the Trial Court decreed the suit in favour of respondent Nos.1 and 2 herein and directed respondent Nos.3 and 4 herein (Manjit Singh and Arun Gupta) to execute the transfer deed in favour of respondent Nos.1 and 2 within a period of one month. The Trial Court while decreeing the suit inter-alia held as under :

“27. So the defendants no.1 to 3 and defendant no.4 have unnecessarily confused the matter by alleging that in the suit property the defendants no.1 and 2 have 51% share and the defendant no.3 has 49% share. In fact, from the entire documents available on the file and as per the record of defendant no.4, the share holding of 51% and 49% are with regard to firm having name M/s Chemical & Mechanical Engineering Industry only and this share does not mean that they have shares as such

in the suit property, rather, the suit property is wholly owned as lessee by the defendant no.1 only and the agreement is also with regard to the transfer of lease rights in the suit property and actual ownership vests with the defendant no.4 only. In the document Ex.D2 dated 28.10.1988 also, the defendant no.2 has nowhere mentioned about his alleged 51% share in the suit property being attorney holder of defendant no.1 and the plaintiffs have proved that the time for completion of the bargain was extended from time to time vide documents Ex.P3 to Ex.P6 and the final date fixed for completion of bargain was 30.06.2011, on which date, the plaintiffs remained present in the Office of Executive Magistrate, Mohali, to perform their part of the agreement. The defendants no.1 and 2 have nowhere taken the plea in the written statement that the plaintiffs were not ready and willing to perform their part of the agreement and were not having balance sale consideration as alleged in the written arguments as well as oral submissions. So this plea cannot be available to the defendants and no such plea regarding forging of signatures has been taken by the defendants no.1 and 2 and even no witness has been examined by the defendants no.1 and 2 to prove that his signatures have been forged by the plaintiffs anywhere in the departmental correspondence. Even otherwise nothing

favourable to the defendants came out from the cross-examination of the plaintiffs and the written arguments submitted by the defendant no.2 for himself and being attorney holder of defendants no.1 and 3 are not tenable. There is no supporting evidence.”

The said judgment and decree dated 19.05.2015 was challenged in an appeal by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta) before the Appellate Court which appeal also came to be dismissed vide judgment and decree dated 20.11.2018. Against the said judgment and decree dated 20.11.2018 a regular second appeal being RSA No.1189 of 2019 was preferred by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta). Vide judgment dated 10.07.2019 the said appeal was dismissed by this Court and eventually stood affirmed by the Hon’ble Supreme Court vide order dated 20.01.2020 passed in SLP No.1066 of 2020.

During the pendency of the regular second appeal, respondent No.5 herein (Meenakshi Gupta) filed a suit for declaration to the effect that she was owner to the extent of 49% in the Industrial Shed No.D-73, Phase 5, Mohali measuring 2 kanals and that the judgments and decrees dated 19.05.2015 and 20.11.2018 did not affect her ownership and possessory rights. An application under Order 7 Rule 11 CPC was filed by respondent Nos.1 and 2 herein in the said suit which application was dismissed vide order dated 30.10.2021. Against the said dismissal, CR No.2944 of 2021 is pending before this Court in which further proceedings before the Trial Court have been stayed. Interestingly, after the dismissal of SLP No.1066 of 2020 on 20.01.2020, respondent No.4 (Arun Gupta) also filed a suit for declaration to the effect that respondent No.3 (Manjit Singh) had not been

heard for the last 7 years by those who would have naturally heard if he had been alive and therefore the GPA and the SPA be cancelled. The said suit is pending. Meanwhile, after dismissal of the appeal by the lower Appellate Court on 20.11.2018, an execution petition was filed by respondent Nos.1 and 2 herein. In the said execution application, various applications were filed by the judgment debtors as is apparent from the impugned order dated 10.01.2022 by which order as many as 10 applications were disposed off out of which 8 were filed by the judgment debtor/respondent No.5 (Meenakshi Gupta) and the petitioner herein. Vide the impugned order it was also held that the claim of the decree-holder was genuine and the decree-holder was entitled to get the relief. Application dated 19.02.2020 moved by the petitioner herein for placing on record the certified copy of the application under Order 12 Rule 5 CPC and objections dated 21.11.2019 filed by the petitioner herein under Order 21 Rules 98 to 103 CPC were also disposed off by the impugned order with the following observations :

“13. Hence, it has been held that too in very detail that the JD Manjit Singh was the only allottee of the property in question and he is having 100% in the said property and had genuinely entered into an agreement to sell with the decree holder qua the said and also held that neither any other partner nor the third party objector ie. M/s Chemical and Mechanical Engineering Industries are having any right in the suit property, hence are having no locus-stand in the said dispute.

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14. So, under these circumstances it is again transparently clear that even the Ld. Appellate Court has also discussed all the facts claimed by the third objector at this stage and discarded the same in detail. Moreover, it also seems to be that JD Meenakshi Gupta and the third party objector namely M/s Chemical & Mechanical Engineering Industries in connivance with each other have filed applications/objections in this execution petition and have tried to re-agitate and have tried to twist the facts which have already attained finality. Hence, on the basis of this technical score as well as on merits it has been held that all the facts claimed by the third party objector cannot be re-agitated as they have already attained finality that too upto the level of Hon'ble Supreme Court of India. Hence, both these above stated application/objections filed by third party objector i.e. M/s Chemical & Mechanical Engineering Industries are ordered to be dismissed.”

Aggrieved by the said order, the present revision petition has been preferred.

Learned counsel for the petitioner has contended that respondent No.1 herein being a witness to the Partnership Deed dated 01.08.1985 was well aware of the partnership deed and that the agreement to sell which had been signed only by one of the partners was not enforceable against the partnership firm. It is further contended that the partnership deed

is still in existence. It is further the contention by the counsel for the petitioner that the partnership firm was never impleaded as a party in the civil suit and no relief was claimed against the petitioner and that respondent Nos.1 and 2 herein were trying to take benefit of a mistake committed by one of the partners and were trying to usurp property worth crores for a meager amount of Rs.45 Lakhs. Learned counsel has further contended that as per Sections 14, 15 and 19(2) of the Partnership Act, 1932, a partner cannot transfer the immoveable property belonging to the firm without the consent of the partners. The last argument of learned counsel for the petitioner is that the objections have been dismissed in a summary manner without taking any evidence and hence the impugned order is against the settled principles of law.

Per contra, learned Senior counsel appearing for respondent Nos.1 and 2 herein has contended that all the arguments raised by the counsel for the petitioner were the arguments raised on behalf of respondent No.5 (Meenakshi Gupta) while appearing in the suit and the same stood rejected right upto the Supreme Court. It is further the contention that the specific case of respondent No.5 (Meenakshi Gupta) was that she is owner to the extent of 49% and therefore the agreement to sell to which she was not a signatory was not enforceable in law at least qua her rights. Learned Senior counsel has further referred to the findings of the Trial Court as well as this Court in RSA No.1189 of 2019 to contend that the said arguments stood rejected. It is further the contention of learned Senior counsel that the judgment debtors as well as the petitioner are adopting novel methods to deprive the decree-holder of the fruits of his decree. It is also the contention

that the objections filed before the Executing Court by the petitioner are also through Meenakshi Gupta (respondent No.5) who was the party to the suit.

Heard.

It is oft said that the travails of a decree holder commence after he has obtained a decree in his favour. In the present case respondent Nos.1 and 2 entered into an agreement to sell dated 22.09.2009 with respondent No.3 (Manjit Singh) through his power attorney holder respondent No.4 (Arun Gupta) with regard to an industrial plot in Industrial Area, Phase 5, Mohali measuring about 2 kanals. On 03.08.2011 respondent Nos.1 and 2 filed a suit for possession by way of specific performance of agreement to sell dated 22.09.2009. A separate written statement was filed by respondent No.4 (Arun Gupta) on his behalf and on behalf of respondent No.3 (Manjit Singh) as his GPA/SPA holder. Respondent No.5 (Meenakshi Gupta), who is also the wife of respondent No.4 (Arun Gupta), filed a separate written statement. In the said written statement respondent No.5 (Meenakshi Gupta) took a specific stand that she was a co-allottee with respondent No.3 (Manjit Singh). It was averred by her that she was owner to the extent of 49% share and that Manjit Singh and Arun Gupta (respondent Nos.3 and 4 respectively) were owners to the extent of 51% share. The Trial Court decreed the suit on 19.05.2015 specifically holding that respondent No.5 (Meenakshi Gupta) was not a co-allottee and the property stood in the name of respondent No.3 (Manjit Singh). It was further held that the papers of the firm M/s Chemical and Mechanical Engineering Industries (petitioner herein) were appended with the reply wherein respondent No.5 (Meenakshi Gupta) had 49% share. It was further held that merely because she had 49% share in the firm, M/s Chemical and Mechanical Engineering Industries (petitioner herein) did not

mean that she had a share in the suit property and that the suit property was wholly owned as lessee by respondent No.3 (Manjit Singh). Aggrieved by the said judgment and decree dated 19.05.2015, an appeal was preferred by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta respectively) which appeal was dismissed vide judgment and decree dated 20.11.2018. Aggrieved by the judgments and decrees passed by the Trial Court and the lower Appellate Court, respondent Nos.3 and 4 preferred RSA No.1189 of 2019 in this Court which was also dismissed vide judgment dated 10.07.2019. Thereafter, respondent Nos.3 and 4 (Manjit Singh and Arun Gupta respectively) approached the Hon'ble Supreme Court and the Special Leave Petition (SLP No.1066 of 2020) preferred by them was also dismissed on 20.01.2020. In the judgment passed by this Court on 10.07.2019 in RSA No.1189 of 2019, it was specifically noted that the plea taken by the defendants that Meenakshi Gupta was a co-allottee in the plot along with respondent No.3 (Manjit Singh) was rejected observing that the suit property stood in the name of defendant No.1 (Manjit Singh) and was not transferred in the name of defendant No.3 (Meenakshi Gupta) and, as such the latter could not be termed as a co-allottee in the suit property. The said judgment attained finality inasmuch as the SLP preferred against it was dismissed on 20.01.2020. During the execution proceedings, as many as 10 applications were preferred. Vide the impugned order, all the 10 applications were disposed off. The Executing Court took up 4 applications together - one application filed by respondent No.5 (Meenakshi Gupta) to direct the decree holder to admit facts, documents and interrogatories; second application moved by respondent No.5 (Meenakshi Gupta) under Order 21 Rules 98 to 103 CPC; third additional objections dated 31.10.2019 filed by respondent

No.5 (Meenakshi Gupta) with a prayer for stay of proceedings of the execution till its final decision; and the fourth application by respondent No.5 (Meenakshi Gupta) to direct judgment debtor No.4 to admit or deny the facts, documents and interrogatories. While dealing with the said applications, the Executing Court held that all the said issues had been raised in the civil suit and respondent No.5 (Meenakshi Gupta) had chosen not to challenge the judgment and decree dated 19.05.2015 passed by the Trial Court in the suit for specific performance.

Two applications filed by present petitioner were taken up together by the Executing Court - one application for placing on record certified copy of application under Order 12 Rule 5 CPC; and second application being objections under Order 21 Rules 98 to 103 CPC. The said application being objections under Order 12 Rule 5 CPC were filed by the petitioner herein through Meenakshi Gupta, its partner. The Executing Court held that judgement debtor-respondent No.3 (Manjit Singh) was held to be 100% owner of the suit property as was held by the civil court in the suit for specific performance. It was held in the impugned order that :

“14. So, under these circumstances it is again transparently clear that even the Ld. Appellate Court has also discussed all the facts claimed by the third objector at this stage and discarded the same in detail. Moreover, it also seems to be that JD Meenakshi Gupta and the third party objector namely M/s Chemical & Mechanical Engineering Industries in connivance with each other have filed applications/objections in this execution petition and have tried to re-agitate and have

tried to twist the facts which have already attained finality. Hence, on the basis of this technical score as well as on merits it has been held that all the facts claimed by the third party objector cannot be re-agitated as they have already attained finality that too upto the level of Hon'ble Supreme Court of India. Hence, both these above stated application/objections filed by third party objector i.e. M/s Chemical & Mechanical Engineering Industries are ordered to be dismissed.”

Learned counsel for the petitioner has vehemently argued that the present petitioner was not a party to the *lis* and the property being partnership property could not have been sold. It is further the argument of learned counsel that the agreement to sell was signed by only one of the partners and, hence, it was not enforceable against the partnership firm. One of the partners i.e. respondent No.3 (Manjit Singh) is alleged to have signed the agreement to sell and the other partner i.e. respondent No.5 (Meenakshi Gupta) is stated not to have signed the agreement to sell. Learned counsel argued that respondent No.5 (Meenakshi Gupta), who was a party to the suit as a defendant, had filed a separate written statement raising the plea that the suit property belonged to the partnership firm and that she being a 49% share-holder of the firm was a co-allottee. It is further argued that all rights and issues raised need to be decided by the Executing Court. In support of his arguments reliance has been placed on **Babulal Vs. Raj Kumar & Ors. [AIR 1996 SC 2050]**, **Tanzeem-e-Sufia Vs. Bibi Haliman [2002 (4) RCR (Civil) 1]**, **Har Vilas Vs. Mahendra Nath & Ors. [2011 (15) SCC 377]**,

Gram Panchayat, Hassanpur Vs. Jagdish Chand & Ors. [2007 (4) RCR (Civil) 636].

There can be no quarrel with the proposition of law laid down in the judgments relied upon by learned counsel for the petitioner. However, in the present case the issues now sought to be raised by the petitioner herein are issues which were raised in the suit by none other than the partners through whom the objections and the present revision petition have been filed and they stand rejected. The judgment and decree dated 19.05.2015 passed by the Trial Court stands affirmed upto the Hon'ble Supreme Court. What in effect the petitioner is wanting is to re-open all the issues already agitated unsuccessfully right upto the Supreme Court, which cannot be permitted in law. The partner of the petitioner i.e. respondent No.5 (Meenakshi Gupta) though stated that there was no relief claimed against her, chose to file a separate written statement and contest the suit raising a plea that she was a partner to the extent of 49% in the firm and hence, a co-allottee of the property. This argument was rejected and it was categorically held that respondent No.3 herein (Manjit Singh) was the only allottee of the suit property and that though respondent No.5 herein (Meenakshi Gupta) was a partner to the extent of 49% in the petitioner-firm, however, it could not be said that she was an allottee in the suit property. The very argument that the suit property was owned by the firm was also negated. By way of the present objections the entire case cannot be re-opened and re-agitated. Respondent No.5 (Meenakshi Gupta) claiming herself to being a partner to the extent of 49% share in the petitioner firm was satisfied with the judgment and decree passed by the Trial Court on 19.05.2015 and chose not to challenge the same in appeal. The same was

challenged in appeal by respondent Nos.3 and 4 herein (Manjit Singh and Arun Gupta). This Court while dismissing RSA No.1189 of 2019 specifically held that :

“Both the Courts below considering the facts and circumstances of the case, pleadings of the parties and evidence available on record brought by the parties have returned findings that plaintiffs are entitled to possession of the suit property by way of specific performance of agreement dated 22.9.2009 on payment of balance consideration. The plea taken by the defendants that defendant No.3 Minakshi Gupta was co-allottee in the plot along with defendant No.1 – Manjit Singh was rejected observing that the suit property stands in the name of Manjit Singh – defendant No.1 and was not transferred in the name of defendant No.3, as such the latter could not be termed as co-allottee in the suit property.”

The stand of Meenakshi Gupta who is none other than an alleged partner of the present petitioner firm and through whom the present revision petition has been filed, stood rejected and it was categorically held that respondent No.3 herein (Manjit Singh) was the sole lessee of the property in dispute.

Learned counsel for the petitioner has further relied upon the judgments in the cases of **Addanki Narayanappa & Anr. Vs. Bhaskara Krishnappa (dead) & thereafter his heirs & Ors. [AIR 1966 SC 1300]; Ashutosh Vs. State of Rajasthan & Ors. [2005 (4) RCR (Civil) 56] and Devi Prasad Rai & Ors. Vs. Kanhaiyalal Mukharya & Ors. [1986 (4)**

SCC 5] to contend that the suit property was partnership property and, hence, could not have been sold.

In the case of **Addanki Narayanappa** (supra), the property was bought by its partners. In the present case there is a specific finding by the civil courts that the suit property did not belong to the firm and the sole lessee was Manjit Singh. That being so, the judgment relied upon by learned counsel would have no relevance to the present case. Similarly the judgment in the case of **Ashutosh** (supra) would also have no applicability inasmuch as in the said case the execution was against the firm. In the present case the execution is not against the firm but against an individual who has been held to be the sole lessee. Similarly, the facts of the case in **Devi Prasad Rai** (supra) are also distinguishable inasmuch as in the said case the property belonged to the partnership firm while in the present case learned counsel is unable to show as to on what basis it is being argued that the suit property belonged to the petitioner firm. It was never a stand in the suit for specific performance by either of the partners of the petitioner firm (Manjit Singh and Meenakshi Gupta) that the petitioner firm was the owner of the suit property.

It has also been brought to the notice of the Court that against the impugned orders dated 10.01.2022, CR-480-2022 has been preferred by respondent No.5 herein (Meenakshi Gupta) which is pending for 01.02.2023. Another civil revision petition being CR-534-2022 against the impugned orders dated 10.01.2022 was preferred by respondent Nos.3 and 4 herein (Manjit Singh and Arun Gupta) which stands disposed off on 17.02.2022. CWP-1872-2022 filed by the present petitioner for issuing directions to the Executing Court also stands disposed off on 23.02.2022. All the said three

cases were filed by the same counsel as that representing the present petitioner in the present civil revision petition.

In view of the above, I do not find any illegality or irregularity in the impugned orders. There is no merit in the present revision petition which is accordingly dismissed with costs assessed at Rs.50,000/-. Pending applications, if any, also stand disposed off.

Dismissed.

30.11.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO