

106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2377-2020
Decided on:-15.12.2022

Palwinder Singh

...Petitioner.

vs.

Sandeep Kaur

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

By way of present revision petition, challenge has been made to an order dated 21.01.2020 (Annexure P-4) passed by the Executing Court, whereby the execution application filed at the instance of petitioner-plaintiff (decree-holder) was dismissed.

2. Based on an agreement to sell dated 12.07.2012, pertaining to the suit property, the petitioner-plaintiff filed a suit for possession by way of specific performance. The said suit was filed on 31.05.2013 and was decreed on 17.04.2018, followed by filing of an execution application by the petitioner-plaintiff on 08.06.2018. While execution proceedings were going on, the Sub-Registrar of the concerned area submitted his report before the Executing Court to the effect that the land in question already stood transferred in favour of one Ranjit Kaur wife of Malkeet Singh, vide sale deed dated 20.12.2012, executed at the instance of respondent-judgment debtor. Based on the said report dated 26.11.2019, the Executing Court vide order dated 21.01.2020, dismissed the execution application by recording

that the same was rendered infructuous. It is the aforesaid order dated 21.01.2020, which has been impugned herein by way of present revision petition.

3. Learned counsel for the petitioner submits that the sale of suit property after execution of the agreement to sell dated 12.07.2012 by respondent/judgment debtor in favour of petitioner/plaintiff (decree-holder) would not even bind or affect the rights of the petitioner under the decree passed in his favour. He further submits that the learned Executing Court committed an error of law while dismissing the execution application, merely, on the ground that the property in question already stood sold prior to filing of the suit in favour of a third party vide sale deed dated 20.12.2012.

4. Notice of motion in the present revision petition was issued vide order dated 19.09.2022.

Though, office report shows that dasti notice issued to respondent not received back served or otherwise, however, the dasti summons along with service report dated 13.12.2022 have been produced in the Court today by learned counsel for the petitioner, which are taken on record, to record that the respondent stands served. However, no one appears on her behalf.

5. I have heard learned counsel for the petitioner as well as gone through the record, I find substance in the submissions made on behalf of the petitioner.

6. Once, by virtue of judgment and decree dated 17.04.2018, it was proved on record that the agreement to sell dated 12.07.2012 was validly executed between the petitioner and respondent as regards the

property in question, any subsequent alienation/sale deed of the same at the instance of respondent was always governed and regulated by the rights conferred upon the petitioner-plaintiff under the agreement to sell dated 12.07.2012 as regards its enforcement as per law. The Executing Court failed to appreciate the fact that strictly speaking principles of *lis pendens* as provided under Section 52 of the Transfer of Property Act, 1882, may not even apply to the facts and circumstances of the present case, the respondent having sold the suit property in favour of third party even prior to filing of the suit. In fact, the respondent/defendant having entered into an agreement to sell dated 12.07.2012 with the petitioner, had no right to alienate the suit property to any third party. In the present case, suit was filed on 31.05.2013 and the same was decreed in favour of petitioner-plaintiff vide judgment and decree dated 17.04.2018 by recording him to be ready and willing to perform his part of agreement, which was never challenged at the instance of respondent/judgment debtor in any subsequent proceedings/appeal.

7. Still further, in the absence of objections having been filed at the instance of so called third party i.e. the purchaser from the respondent/judgment debtor, even having purchased the suit property, prior to the filing of present suit, the executing court exceeded its jurisdiction while rendering the execution proceedings being infructuous. The only protection to the persons having purchased suit property subsequent to execution of agreement to sell has been provided under Section 19(b) of the Specific Relief Act, 1963 (for brevity "1963 Act"), the same even enjoins the subsequent purchaser/transferee to establish that the transfer was made in good faith for value and without notice of the original contract. Section 19(b) of the 1963 Act reads as under:-

19. Relief against parties and persons claiming under them by subsequent title.-Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against_

....

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;”

8. In the present case, there is nothing on record to suggest that the subsequent transferee ever approached the executing court, invoking his rights under Section 19(b) of the 1963 Act.

9. A perusal of Section 19(b) of the 1963 Act shows that the same does not permit the vendor to unilaterally terminate the prior agreement of sale and to alienate the property and thus, the purchasers cannot be made to suffer on this account for no fault of his.

10. In view of the discussion made herein above, the present revision petition is allowed, the impugned order dated 21.01.2020 is ordered to be set aside, directing the Executing Court to proceed with the execution proceedings based on the judgment and decree dated 17.04.2018 passed in favour of petitioner/plaintiff/decre-holder, in accordance with law.

11. Disposed of accordingly.

12. Pending application(s), if any stand disposed of.

15.12.2022

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No