

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

115

Civil Revision No.6761-2019(O & M)
Date of Decision : 22.04.2022

Sachin Goyal and others

...Petitioners

Versus

Arunesh Aggarwal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr.Jagdish Manchanda, Advocate
for the petitioners

Mr.Amit Jain, Senior Advocate with
Mr.Varun Parkash, Advocate
for respondent No.1

ANIL KSHETARPAL, J (ORAL):

While assailing the correctness of order passed by the trial Court on 11.02.2019 (Annexure P-5), which has been affirmed by the first Appellate Court on 06.09.2019, the defendants have filed the present revision petition.

The respondents(plaintiffs) filed a suit for partition with consequential relief of permanent injunction. There are two different properties, partition whereof has been sought. One is House No.187, located in village Dhanas, within the territory of U.T.Chandigarh. It is being given on lease. The second property is Building No.259 in village Sarangpur, which is also within the territory of U.T.Chandigarh. It is stated to be a six storey building having showrooms, hundreds single bedroom flats. These are also being used for leasing out. The suit for partition was filed in May 2016. Both the courts on the basis of material available on the record have ordered appointment of receiver in order to secure the interest of both the parties.

It may be noted here that previously on two occasions, the

defendants have entered into a settlement with the plaintiffs but failed to

honour the same. They are attempting to delay the proceedings by adopting all the dubious means.

Civil Revision No.3549 of 2021 filed by the petitioners came up before this Court on 07.01.2022. While deciding, it was observed as under:

From the facts noticed above, it is evident that after 06.11.2017, neither defendant no.1 to 3 nor the plaintiff requested the trial court to dispose of the suit in terms of the settlement. As per the settlement, defendant no.1 to 3 were required to pay a sum of Rs.2,10,00,000/- to the plaintiff which admittedly, has not been paid. It is also not in dispute that defendant no.1 to 3 did not hand over the possession of 10 rooms in House No.187, situated within the Lal Dora of village Dhanas to the plaintiff by 13.11.2017.

At this stage, it will be appropriate to extract the alleged settlement arrived at between the parties which was filed in the Court. It is extracted as under:-

“This compromise deed is being executed between Arunesh Aggarwal aged 55 years, son of Sh. J.K Aggarwal r/o #513, Sector 11B, Chandigarh, hereinafter called as first party, which includes his successors, assignees, legal representatives etc.

and

Sh Ghanshyam Dass aged 66 years son of Late Sh. Jagan Nath, Nitin Goyal & Sachin Goyal both sons of Sh. Ghanshyam Dass Goyal, all residents of #647, Milk Colony, Dhanas Chandigarh, hereinafter called as second part, which includes his successors, assignees, legal representatives etc.

Whereas the first part has filed a suit for partition and possession etc. of house no. 187 situated within the red line of Village Dhanas duly shown in the rough site plan attached with the suit, as well as partition and possession on building no. 259, situated within red line of village Sarangpur duly shown in the

rough site plan attached with the suit, against the second part and tenants. Now with the intervention of the respectable people of the locality and common friends of the parties, the first and the second part have settled all their disputes with regard to above two properties, and other disputes if any, on the following terms and conditions:

1. That the first part in terms of this compromise deed agreed to get the sale deed registered of his entire share in building no. 259, situated within red line of village Sarangpur (duly shown in the rough site plan) in favour of second part or their nominee on or before 13 November, 2017. Similarly the second part will get the sale deed registered of their respective shares in house no. 187 situated within the red line of Village Dhanas (duly shown in the rough site plan), in favour of the first part or his nominee, on or before 13 November, 2017, and at the time of execution of both sale deeds, the second part will pay Rs. 2,10,00,000 (Two crore ten lakhs only) to the first part.

2. That the second part will handover the possession of at least 10 rooms in House no. 187 situated within red line of village Dhanas to the first part by 13 November, 17 and the second part undertakes to get remaining portion/rooms: vacated and deliver the possession to the first part as expeditiously as possible. The first part shall also make the required efforts and extend cooperation to the first part in getting the remaining rooms vacated.

3. That the first part and second part will not initiate any proceedings i.e, civil, criminal or Misc, BH proceedings against each other in any manner, except for compliance of the terms of this compromise deed. The payments made by the first party to the second party and second party to the first party prior to this compromise deed shall stands waived off settled.

4.That in case any party of this compromise deed will back out from the terms of this compromise deed then the other party can get the terms of this compromise deed executed through court of law.

5.That this compromise deed has been executed between first part and second part without any pressure, coercion or influence .of any type and has been executed with the mutual consent of first and second part with their sound mental state of mind.

IN WITNESS WHEREOF both the parties have set their hands on this compromise deed today on 06/11/2017 at Chandigarh in the presence of the witnesses.

WITNESS NO.1

FIRST PART

*Sd/-Ishwar Chand
#1503/11-D,
Chandigarh*

Sd/-Arunesh Aggarwal

WITNESS NO.2

SECOND PART

*Sd/- Varun
#812/17,
Panchkula.*

*1. Sd/-Ghanshyam Dass
2. Sd/- Nitin Goyal
3. Sd/-Sachin Goyal”*

It is evident that the parties at a particular point of time did enter into settlement which contained reciprocal promises. It is also evident that defendant no.1 to 3 did not fulfill their part of the various promise in the contract. They never made any over attempt to get the settlement implemented for a period of 4 years.

Keeping in view the aforesaid facts, the trial court, in the considered opinion of this Court, has not erred in dismissing the application. However, it is observed that the observations made by the trial court with regard to legality of the agreement dated 06.11.2017 are erroneous and therefore, set aside.

Special Leave Petition filed by the petitioners before the Supreme

Court challenging the order dated 07.01.2022 has been dismissed on

11.04.2022.

Learned counsel representing the petitioners contend that the petitioners are in possession of the property and therefore, the Courts have erred in appointing the receiver. It is not disputed that the actual physical possession of both the properties is with the tenants. The defendants are earning huge income without securing the interest of the plaintiffs.

Further, the conduct of the petitioners as noticed in the order dated 07.01.2022 does not entitle the petitioners to any discretionary relief.

In the absence of perversity or material irregularity, this Court while exercising revisional jurisdiction, does not find it appropriate to interfere in the impugned orders dated 11.02.2019 and 06.09.2019 passed by the courts below.

The petition stands dismissed.

It is clarified that the receiver will continue to lease out the property for short duration in order to maintain regularity in the income and keep up regular accounts.

22.04.2022

neenu

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No