

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

114

CR-6961-2019

Date of decision: 01.12.2022

MOHAMMAD ANWAR

..Petitioner

Versus

MOHAMMAD NISAR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanish Jindal, Advocate
for Mr. Arun Jindal, Advocate
for the petitioner.

Mr. Sunny K. Singla, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

The petitioner's objection petition has been dismissed by the Executing Court on 12.10.2017. His first appeal was ordered to be dismissed on 05.10.2019.

This revision petition has been filed challenging the correctness of the aforesaid orders. In substance, the petitioner is not a party to the judgement and decree passed in favour of the respondents. He had filed the objections as a third party. He claims to be in possession of the property pursuant to an agreement to sell executed by Smt. Amarjit Kaur in his favour. His suit, for specific performance of the agreement to sell, is already pending.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The learned counsel representing the petitioner submits that the objection petition filed by the petitioner has been dismissed summarily without permitting the petitioner to prove his case. He submits that the property in possession of the petitioner is different and the decree obtained by the respondents is the result of fraud and collusion. He submits that the suit for possession by way of specific performance of the agreement to sell was

filed on 23.03.2015, whereas, it was decreed on 18.04.2015 i.e. within a period of less than even one month from the date of its filing. Moreover, the fact, that House No.B-IV/1180 was gifted by Sh. Mohammad Shafi to Sh. Mohammad Hanif who, in turn, gifted it to Smt. Amarjit Kaur was required to be proved before the Executing Court.

On the other hand, learned counsel representing the respondents submits that the petitioner has already filed a separate suit in this regard.

In the execution petition, the respondents pray for delivery of possession. In such circumstances, the petitioner has objected to the delivery of possession. He is not a party to the decree. Hence, his objections are required to be decided in accordance with the procedure laid down in Order XXI Rule 101 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). A decision under Order XXI Rule 101 CPC is required to be treated as a decree. Hence, in the facts of this case, it was incumbent upon the Court to frame issues and permit the parties to lead evidence.

Keeping in view the aforesaid facts, the orders dated 12.10.2017 and 05.10.2019 are set aside.

The matter is remitted back to the Executing Court to decide afresh after permitting the parties to lead evidence.

The parties through their counsel are directed to appear before the Executing Court on 22.12.2022.

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

December 01st, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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