

S. No.245

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

**CR No.7399 of 2019 (O&M)
Date of Decision:30.11.2022**

**Krishan Gopal Petitioner
Vs.
Hupesh Respondent**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rakesh Kumar Sharma, Advocate
for the petitioner.

DEEPAK GUPTA, J.

This revision is directed against order dated 07.08.2019 (Annexure P.10), whereby learned Executing Court has disposed of the execution as unexecuted. To avoid confusion, parties shall be referred as per their status before the Courts below.

2. The civil suit titled 'Krishan Gopal vs. Hupesh' [CS/55665/2014] filed by the plaintiff (now petitioner) for possession by way of specific performance of agreement to sell dated 14.10.2011 in respect of suit land against defendant Hupesh (now respondent), was decreed by the court of Ld. Civil Judge (Sr. Divn.), Faridabad vide judgment dated 31.05.2016 (Annexure P.3). Decree was ex-parte, inasmuch as after putting in appearance and filing the written statement, defendant did not contest and had been proceeded ex parte on 21.12.2015. In the execution petition (Annexure P.4) filed by the plaintiff- decree-holder, the defendant- JD was proceeded ex parte on 01.03.2017. Sale Deed in pursuance of the decree was executed on 03.08.2018 and got registered on 07.08.2018 in favour of the plaintiff-decree-holder, through Local Commissioner appointed by the Executing Court. However, on the warrant

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of possession, issued by the Executing Court, it was reported by the revenue authorities that JD had already sold the property and as nothing was standing in his name, so proceedings for warrant of possession could not be carried out. On the basis of this report, learned Executing Court vide impugned order dated 07.08.2019 (Annexure P.10) disposed of the execution as unexecuted, as counsel for the decree-holder had stated that he intended to initiate appropriate civil and criminal proceedings against judgment debtor.

3. Above-said order is assailed by way of this revision by the plaintiff- decree holder submitting that the learned Executing Court should have proceeded as per Order 21 Rule 35 of the Code of Civil Procedure by handing over the possession to the decree holder, even if the possession of the property was found with a third party bound by the decree. He also contended that the petitioner has come to know that in order to frustrate the agreement, during pendency of the suit, the defendant- respondent-judgment debtor had executed two sale deeds dated 14.09.2015 and 11.05.2016 (Annexures P.8 and P.9) but these sale deeds are hit by the rule of lis-pendens and so, not binding upon the rights of the petitioner - decree holder.

4. Notice of motion was issued to the respondent. Despite being served, as per law, there was no representation on his behalf and so, he was proceeded ex parte.

5. Having heard learned counsel for the petitioner and having perused the paper book, I find merit in the revision.

6. Relevant part of Order 21 Rule 35 of CPC reads as under:-

“35. DECREE FOR IMMOVABLE PROPERTY.

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2)xxxxxxxxxxxxx

(3) xxxxxxxxxxxx”

7. It is clear from the above-said provision that when there is a decree for delivery of immovable property, possession is to be delivered to the decree holder. If necessary, said possession is to be delivered by removing any person bound by the decree, who refuses to vacate the same.

8. In the present case, sale deeds dated 14.09.2015 and 11.05.2016 (Annexures P.8 and P.9) as referred by the petitioner have been executed by the respondent- JD during pendency of the suit, which earlier culminated into the decree for specific performance. Though, it is not clear from the report of the revenue authorities as to which third party was in possession of the property in dispute when warrant of possession was sought to be executed, but it was for the Executing Court to ensure the delivery of possession to the decree holder even by removing any person bound by the decree, who refused to vacate the property.

9. It is settled position of law that a purchaser of the suit property during pendency of litigation has no right to resist or obstruct execution of the decree passed by the competent Court, as doctrine of lis-pendens prohibits a party from dealing with the property, which is a subject-matter of the suit. Lis-pendens itself is treated as constructive notice to purchaser that

he is bound by decree to be passed in the pending suit. Said position is clarified even by Rule 102 of Order 21 CPC to the effect that there should be no resistance or obstruction by a transferee pendente-lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI CPC. Reference in this regard can be made to **Usha Sinha Vs. Dina Ram and others, 2008(3) RCR (Civil) 145 (SC).** After making reference of [Silverline Forum Pvt. Ltd. v. Rajiv Trust](#), (1998) 3 SCC 723, it was held as under:

“21. We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.”

10. In the present case, the decree for specific performance having been already passed against the respondent- judgment debtor, who neither contested the suit nor appeared in the execution, was bound to deliver the possession. Even if he had sold the property to some third party during pendency of the suit, the transferee was bound to vacate the property and it was for the Executing Court to ensure the delivery of possession to the decree holder by executing the warrant.

11. In view of the above, the impugned order cannot be sustained.

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Same is set aside. Revision is accepted. The Executing Court is directed to proceed further in accordance with law so as to deliver possession of the suit property to the decree holder- petitioner by ensuring the execution of the warrants of possession.

November 30, 2022
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No