

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

CR-5860-2022(O&M)

Date of decision:-12.12.2022

Ashok Kumar and another

...Petitioners

Versus

Rikhi Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Jain, Senior Advocate with
Mr.Ranvijay Singh, Advocate
for the petitioners.

H.S. MADAAN, J.(ORAL)

1. Briefly stated, facts of the case are that one Rikhi Ram had filed a suit for possession by way of specific performance of agreement to sell dated 9.5.1992 against defendant Parvesh Kumar & Company; the said suit filed on 20.10.1995 was decreed on 16.4.2007; the said judgment and decree were challenged in first appeal before the Court of District Judge, Yamunanagar at Jagadhri by defendants, however the appeal was dismissed. The defendant approached the High Court but was unsuccessful. He even knocked at the door of the Apex Court by way of filing a SLP but it was also dismissed on 10.4.2019. The sale deed was then executed in favour of Rikhi Ram through the Court.

2. Thereafter, the plaintiff/decreed holder filed an execution application for getting possession of the property in question. During the

course of those proceedings, third party objections were filed by Sh. Ashok Kumar and Smt.Anjana, Sh.Anil Narang and Smt.Bimla Devi contending that JDs Sushil Kumar, Parvesh Kumar (through their power of attorney Mann Singh) and Anil Kumar and Rajesh Bansal, sons of Ramesh Kumar being owners in possession of suit property had sold that property in favour of the objector Bimla Devi vide two different sale deeds both dated 21.7.1995 handing over the possession of the suit property to her; thereafter objector Bimla had sold the suit property to objector Anjana executing a general power of attorney bearing No.23 dated 20.11.2000 in her favour, handing over its possession and on the basis of that general power of attorney objector Anjana had sold the suit property to objectors Ashok Kumar and Anil Narang vide two different sale deeds dated 26.7.2019, handing over the possession to them and now objectors Ashok Kumar and Anil Narang are in possession of the suit property. On coming to know about the pendency of the execution when the Bailiff came to the spot for executing warrants of possession, they came to know about the decree in favour of Rikhi Ram. According to the objectors Ashok Kumar and Anil Narang, they are bona fide purchasers for consideration without notice and are protected under law.

3. Notice of the objection petition filed under Section 47 CPC was given to the decree-holder, who filed reply contesting the objections stating that those were not maintainable and had been filed just to grab the suit property; the sale deed has since been executed in favour of the decree holder through due process of Court by appointing Local Commission, as such warrants of possession cannot be recalled and

execution proceedings cannot be stayed or dismissed; the objections are without any merit and deserve to be dismissed.

4. For proper adjudication of controversy between the parties following issues on merits were framed:

1. Whether the objectors are bona fide purchasers of the suit property and have purchased the suit property, against valid title deeds, in good faith, against valuable sale consideration, without notice of prior agreement dated 9.5.1992 and the decree dated 16.4.2007 is not binding upon the objectors? OP Objectors.
2. Whether the DH and JD no.1 to 4 played fraud upon the objectors and sale deeds/title deeds, in favour of objectors, were already in the knowledge of DH? OP Objectors.
3. Whether the DH is entitled to enforce the decree dated 16.4.2007 against the objectors, who are not parties to the suit? OP Objectors.
4. Whether the claim of the DH, by way of execution of the enforcement of the decree of specific performance, against the objectors is time barred.? OP Objectors.
5. Whether the sale deeds/title deeds, vide which the objectors have asserted their rights over the suit property, are wrong, illegal, null and void and are liable to be set aside? OPDH.
6. Whether the objection filed by the objectors, are not legally maintainable, in the present form? OPDH.
7. Whether the principle of lis pendens applies in the present case? OPDH.
8. Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims

6. After hearing arguments, the Executing Court of Civil Judge (Sr.Divn.), Yamunanagar at Jagadhri decided issues 1 to 4 against the objectors and in favour of the decree holder; issues No.5 to 7 were decided in favour of decree holder and against the objectors. Resultantly, the objections were dismissed.

7. Feeling aggrieved the objectors had filed an appeal against the order before District Judge, Yamunanagar at Jagadhri, which was assigned to Additional District Judge, Yamunanagar at Jagadhri, who vide order dated 6.12.2022 dismissed the application for staying delivery of possession till decision of the appeal. For ready reference the operative part of the order is being reproduced as under:

This court is accordingly of the considered opinion that it would be appropriate and justifiable, if the present appeal is decided on merits as at this stage, there are no circumstances which call out for issuance of any injunction against respondent no.1, till the decision of present appeal. Moreover, it has been specifically pleaded by the appellants/objectors that they are also entitled for stay of the proceedings before the learned lower court and that in case the proceedings are not stayed, the Decree holder would be successful in getting the possession of the property which would cause irreparable loss and injury to the appellants/objectors. Albeit, after bestowal of thoughts, this court is convinced that there are no such rational, justifiable and coherent circumstances which

call out for staying the proceedings before the learned lower court as prayed for by appellants/objectors. Rather, the entire gamut of controversy between the contesting parties has been profoundly analyzed and taking into account the available facts and circumstances, this court is convinced that there are no cogent and credible circumstances for staying the proceedings before learned lower court. Evidently, the sale deed in favour of decree-holder/respondent no.1 has been executed through the process of the court and the available circumstances, therefore, fails to give impetus to the nebulous assertions of the appellants/objectors. It is equally germane to mention that the execution petition before the learned Executing Court was initially filed on 26.09.2009 and decree holder has been pursuing his execution petition since a long period of time whereby he has approached the executing court on the basis of a judgment and decree dated 16.04.2007 pertaining to specific performance of an agreement to sell dated 09.05.1992.

Hence, perusal of the entire state of affairs which culminated into filing of the present appeal indicates strong circumstances in favour of respondent no.1/decreed holder and it further indicates that there are no genuine circumstances to allow the request of the appellants/objectors for grant of any interim order for restraining the respondent no.1/ decreed holder from interfering in the property in question or for staying the operation of the proceedings before the learned Executing Court.

Accordingly, in view of the above said discussion, the request

of appellants/objectors stands declined and application in hand stands dismissed, in the interest of justice.

8. Feeling aggrieved, the objectors have approached this Court by way of filing the present revision petition.

9. I have heard learned counsel for the revisionists besides going through the record.

10. The Executing Court had given full opportunity to the objectors to present their view point. Issues on merits were framed. The parties were afforded opportunities to lead evidence and thereafter vide a detailed order dated 16.11.2022, the Executing Court did not find any merit in the objections raised by the objectors that they are bonafide purchasers for consideration without notice, as such their rights are protected under the Transfer of Property Act. It has to be taken note of that the agreement in favour of the plaintiff is prior in time to the sale deeds executed by the defendant in favour of predecessor-in-interest/vendors of the objectors. The Executing Court on the basis of the evidence produced by the parties has not found the objectors to be bonafide purchasers for consideration without notice. Such findings of fact cannot be brushed aside lightly.

11. Nevertheless appeal filed by the objectors against that order of Executing Court is still pending and fixed for main arguments. The First Appellate Court of Additional District Judge, Yamunanagar at Jagadhri exercising the discretion in a judicious manner without there being any element of arbitrariness has come to the conclusion that no case was made out for staying the delivery of possession to the decree holder,

who was running from pillar to post for the last about 15 years. The rights of the objectors are duly protected under Section 144 CPC because if the objectors ultimately succeed in appeal, then the possession of the property taken from them so as to deliver it to the decree holder can be ordered to be reverted to them. However, the order passed by learned Additional District Judge, Yamunanagar at Jagadhri declining the interim relief to the objectors cannot be faulted with.

12. As regards the judgment referred to by learned counsel for the revisionists i.e. **Sukhjit Singh Versus Rakesh Kumar, 2021(4) PLR 199** that does not find application here since the Executing Court on the basis of evidence adduced before it has not found the objectors to be bonafide purchasers for consideration without notice and the sale deeds in favour predecessor-in-interest of the objectors were executed after the date of agreement to sell the suit property by the defendant in favour of the plaintiff.

13. The order passed by the Additional District Judge, Yamunanagar at Jagadhri is quite detailed and well reasoned and does not suffer from any illegality or infirmity. There is absolutely no merit in the revision and it stands dismissed accordingly.

12.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No