

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112

CR-8332 of 2018(O&M)
Date of decision: 26.07.2022

Parbat Pal Singh and another

..Petitioners

Versus

Chanan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate, with
Mr. Tajinder Singh, Advocate
for the petitioners.

Mr. Tribhawan Singla, Advocate
for the respondents

ANIL KSHETARPAL, J(Oral)

The petitioners herein are legal representatives of late Sh. Gurnam Singh, who was defendant no.2, in the suit for possession by way of specific performance of the agreement to sell dated 21.08.1989. The plaintiffs filed a suit claiming that defendant no.1 (Smt. Jaswinder Kaur) has failed to honour the agreement to sell dated 21.08.1989. Defendant no.2-late Sh. Gurnam Singh was impleaded as defendant because Smt. Jaswinder Kaur transferred the property in his favour. The trial Court, while culling out the issues, framed an issue as to whether late Sh. Gurnam Singh (defendant no.2) is a bonafide purchaser or not?

The court, after appreciating the evidence, found that the sale deed executed by Smt. Jaswinder Kaur in favour of late Sh. Gurnam Singh is not bonafide. Thus, the suit filed by the plaintiffs for possession by way of specific performance of the agreement to sell was decreed. Para 38 of the

judgment and decree dated 23.03.2005 is extracted as under:-

“38. Keeping in view of my findings on above issues, particularly on issues No.1, 2 and 3m the present suit for possession by way of specific performance of the agreement to sell dated 21.08.1989 is decreed with costs in favour of plaintiffs and against defendant no.1. Plaintiff shall deposit the balance sale consideration within a period of two months from today and thereafter defendant no.1 shall execute the sale deed within a period of one month, failing which, plaintiffs shall have the right to get the sale deed executed with the intervention of the court and sale deed dated 11.06.1992 executed by defendant No.1 in favour of defendant no.2 is also hereby set aside. However, suit of the plaintiffs for the alternative relief for permanent injunction is hereby dismissed. Decree sheet be prepared. File be consigned to the record room.”

The learned senior counsel representing the legal heirs of Judgment Debtor no.2 have objected to the execution of the decree on the ground that the trial court did not grant decree of possession in favour of the plaintiffs and against defendant no.2. He submits that in the absence of such decree, the court cannot issue warrants of possession.

This court has considered the submission,.

Defendant no.2 claims right, title and interest in the property on the basis of sale deed executed by Smt. Jaswinder Kaur on 11.06.1992 which has, now, been set aside by the court.

The aforesaid judgment and decree passed by the civil court has been affirmed in the second appeal. In other words, such decree has become final between the parties. No doubt, the court has granted the decree of possession only against defendant no.1, however, the Executing Court is required to examine the intent behind the decree. As a consequenc of the decree, the petitioners (legal representatives of defendant no.2) have no right, title or interest in the property. They can, at the most, be stated to be

in permissive possession pursuant to a sale deed which has already been set aside. Thus, their possession, if any, is referable to the possession delivered by defendant no.1. There is already a decree for delivery of possession against defendant no.1

The learned counsel representing the petitioners relies upon the judgment passed in *Adcon Electronics Pvt. Ltd. vs. Daulat and another, (2001) 7 SCC 698*. In this case, the court examined the question as to whether in the absence of a specific decree granting delivery of possession, the court can issue warrants of possession. Rather, in *Babu Lal vs. M/s Hazari Lal Kishori Lal, AIR 1982 SC 818*, the Supreme Court held that relief of possession is inherent in decree for specific performance of the agreement to sell. In *Sarverunnisa Begum vs. Syed Rafeeq, 2015 (5) RCR(Civil) 738*, Telangana and Andhra Pradesh High Court also distinguished the judgment in *Adcon Electronics Pvt. Ltd.(supra)* while relying on *Babu Lal's case (supra)*.

In the present case, there is a specific decree for delivery of possession, even though it is against defendant no.1.

Keeping in view the aforesaid facts, there is no ground to interfere with the order passed by the Executing Court while issuing warrants of possession.

Dismissed.

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

July 26th, 2022

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(ANIL KSHETARPAL)
JUDGE

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