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ESA No.2 of 2022

Rani Vs. Surinder Singh and others

Present:- Mr. Aakash Singla, Advocate &
Mr. Ankush Singla, Advocate along with
Rani, appellant-in-person.

Ms. Kriti Sharma, Advocate along with
Mr. Balwinder Singh, GPA of respondent No.1-Surinder Singh

Mr. Gurwinder Singh, respondent No.2-in person.
Mrs. Jasvir Kaur, respondent No.3-in person.

Mr. Vinod K. Kataria, Advocate
for respondents No.4 and 5.

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This Execution Second Appeal has been filed by appellant-Rani challenging the order dated 30.09.2019 passed by Additional Civil Judge, (Sr. Division), Kharar, whereby the third party objections filed by the appellant in EXE. No.176 of 2013 arising out of judgment and decree dated 15.06.2011 passed in Civil Suit No.352/.04.03.2005/29.07.2006/19.04.2007, passed by learned Additional Civil Judge, Sr. Division Kharar, was dismissed. Challenge has also been made to the judgment and order dated 05.03.2020 passed by the District Judge, SAS Nagar (Mohali), whereby the appeal filed by the appellant against the order dated 30.09.2019 was also dismissed.

Brief facts of the case are that Gurwinder Singh-respondent No.2 and Jasvir Kaur-respondent No.3 were the owner of the suit plot/house and they entered into an agreement to sell dated 08.12.2004 with Surinder Singh-respondent No.1 (present decree holder) for sale of the said suit property. However, instead of selling it to Surinder Singh, they sold the same to Pawan Kumar-respondent No.4 and Smt. Mona Sharma-respondent No.5.

Aggrieved with the said sale and for enforcing performance of agreement dated 08.12.2004, Surinder Singh filed a suit (Civil Suit No.352) for specific performance. During the pendency of the suit, Pawan Kumar and Mona Sharma further sold the suit property to appellant-Rani on 13.06.2008. Thereafter, all the defendants to the suit (present respondent No.2 to 5) stopped appearing and were proceeded ex-parte. The suit was decreed ex-parte on 15.06.2011. Surinder

Singh filed aforesaid execution petition. Under the orders of the Executing Court,

said Surinder Singh (decree holder) through his GPA Balwinder Singh deposited the balance sale amount and sale-deed dated 20.03.2015 (Annexure P-9) was executed and registered. Thereafter, warrants of possession were issued but the same could not be executed since Rani was staying in the said property by constructing a house. Appellant-Rani filed third party objections on 23.03.2016. The said objections were dismissed vide order dated 30.09.2019 passed by the Additional Civil Judge, (Sr. Division), Kharar. The appeal filed against the said order was also dismissed vide order judgment and order dated 05.03.2020 passed by the Ld. Addl. District Judge SAS Nagar (Mohali). Aggrieved against the said order, the present appeal has been filed by Rani-appellant.

Simultaneously, FIR No.56 dated 26.02.2022 was got registered against Gurwinder Singh, Jasvir Singh, Mona Sharma and Pawan Kumar by the appellant-Rani under Section 420, 406 & 120-B IPC at P.S. City Kharar, District SAS Nagar (Mohali). During the pendency of the said FIR, in anticipatory bail applications filed before this Hon'ble Court, the matter was referred to the Mediation and Conciliation Centre and qua the aforesaid FIR, the matter was settled between the parties vide compromise dated 05.07.2022 (Annexure P-10) and 29.07.2022 (Annexure P-13) respectively. The said FIR has already been quashed qua Pawan Kumar and Mona Sharma vide order dated 28.02.2023 passed in CRM-M-28982-2022. Qua accused Gurwinder Singh and Jasvir Kaur, petition for quashing of the said FIR i.e. CRM-M-43369-2022 is now pending for 16.08.2023. Surinder Singh stated to be not arraigned as accused in the said FIR by the Police.

The matter has been referred to this Forum for amicable settlement of this dispute with the main contesting respondent No.1 (decree holder), namely, Surinder Singh through his attorney Balwinder Singh.

All the parties are present before this Forum and gave their statements, which have been witnesses and verified by Gurwinder Singh-respondent No.2 and Jasvir Kaur-respondent No.3. The statements of the both the parties are as under:

“Statement of Rani daughter of Late Ajit Singh, resident of House No.208, Sector-4, Mundi Kharar, Tehsil Kharar, District SAS Nagar.

Stated that I have filed the instant appeal i.e. ESA No.2 of 2022, against the orders passed by the courts below whereby my third party objections to EXE. No.176 of 2013 arising out of judgment and decree dated 15.06.2011 passed in Civil Suit No.352/04.03.2005/29.07.2006/19.04.2007, passed by learned Additional Civil Judge, Sr. Division Kharar. During the pendency of the appeal, I have settled all my differences with the respondents. I have read and understood

the statement made by Balwinder Singh, GPA of Surinder Singh. I have settled all my claims against all the parties in the present case and nothing is due towards anyone. I will get the FIR quashed by making the statement, which is pending against Gurwinder Singh and Jasvir Kaur.

Statement of Balwinder Singh son of Gurdev Singh resident of Park View Street, Kharar, Tehsil Kharar, District SAS Nagar Mohali. Presently residing at House No.452, Sector 33-A, Chandigarh.

Stated that I am General Power of Attorney holder of Sh. Surinder Singh son of Amarjit Singh son of Gurbax Singh, resident of Village Sil, Tehsil Kharar, District SAS Nagar, on the basis of registered GPA No.374/4 dated 02.07.2008, in the office of Sub Registrar, Kharar. Said Surinder Singh is alive and the aforesaid GPA is still valid. I have settled the entire dispute pertaining to House No.208, Sector-4, Mundi Kharar, Tehsil Kharar, District SAS Nagar, measuring 5 Marla. I withdraw my rights with respect to the said property, which were decided in my favour vide judgment and decree dated 15.06.2011 passed in Civil Suit No.352/04.03.2005/29.07.2006/ 19.04.2007, passed by learned Additional Civil Judge, Sr. Division Kharar. I have already withdrawn my execution petition vide order dated 22.07.2022, passed by learned Civil Judge (Jr. Division), Kharar in EXE. No.176 of 2013. I have already suffered an affidavit dated 26.08.2022 towards full and final settlement in favour of appellant-Rani. Said affidavit has already been placed on the file as Annexure A-14. I have no objection, if the appeal filed by Rani i.e. ESA No.2 of 2022 is allowed and I have no objection, if the sale-deed dated 20.03.2015 executed in my favour on account of aforesaid judgment and decree dated 15.06.2011 is cancelled/set aside. I have already received the all dues/compensation towards full and final settlement of my claims. I have settled all my claims against all the parties in the present case and nothing is due towards anyone. I have paid an amount of Rs.1,04,000/- towards stamp paper fee in the sale deed dated 20.03.2015, which may kindly be refunded to me.”

Both the parties has also made a statement endorsing the said compromise, which has now exhibited in the shape of affidavit as Annexure A-14. This compromise is full and final settlement and this may be read as part of this case. It is ordered that the third party objections filed by appellant-Rani stand allowed and consequently, the sale-deed dated 20.03.2015 (Annexure A-9) executed and registered, on the basis of ex-parte decreed dated 15.06.2011, under the orders of the executing Court is set aside. The Execution petition has already been withdrawn vide order dated 22.07.2022 (Annexure A-12) by contesting respondent No.1-Surinder Singh by virtue of his statement dated 22.07.2022 (Annexure A-11).

Learned counsel for the respondent No.1 has submitted that as per Section 21 of the Legal Services Authority, 1987, the Lok Adalat can order to refund of the Court fee/stamp duty. In support of his submission, he has relied upon the judgment of the Kerala High Court in ***Vasudevan Vs. State of Kerala, 2004 (1) RCR (Civil) 657.***

In view of the above, the appeal stands disposed of in terms of aforesaid compromise and in above terms, It is ordered that in view of Section 21 of the Legal Services Authority, 1987, the Court fee/stamp duty paid by respondent No.1-Surinder Singh in the Civil Suit and sale deed dated 20.03.2015 be refunded to him but in accordance with law.

The appeal stands disposed of accordingly.

(J.C. VERMA)
PRESIDENT

02.05.2023
Atul

(ARVIND KUMAR)
MEMBER