

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

CR 1964/2017 (O&M)

Date of decision: 19.01.2023

Sukhdev Singh and others

.....Petitioners

Vs.

Harbhinder Singh @ Rupinder Singh @ Harminder Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Khunger, Advocate for the petitioners.
Mr. MK Dogra, Advocate for the respondents.

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside the judgment and decree dated 5.1.2015 (Annexure P-1) passed by Ld. Civil Judge (Jr. Div.) Zira; and judgment and decree dated 12.8.2016 (Annexure P-2) passed by Ld. Additional District Judge, Ferozepur.

Brief facts of the case are that petitioners had filed a suit for specific performance of agreement dated 2.9.1977 which was decreed in their favour vide judgment and decree dated 17.11.2010 (Annexure P-3). Respondents were defendants 14 and 15 respectively in the said suit. While decreeing the suit a finding was given by the learned trial court in the judgment and decree dated 17.11.2010 that the petitioners/ plaintiffs had failed to establish their possession over the suit property.

The said judgment and decree was challenged by the respondents/defendants by way of Appeal before the Ld. Additional District

Judge, Ferozepur which was dismissed vide judgment and decree dated 23.10.2015 (Annexure P-4). Though, Ld. Additional District Judge affirmed all the findings of the trial court qua all the issues, however in addition/modification thereof, held that the petitioners/plaintiffs are in possession over the suit land. Accordingly, the findings of the trial court were reversed only to the extent that the petitioners were held to be in possession of the suit land.

The said decree passed by the First Appellate Court was challenged by the respondents before this Court by way of RSA No. 2103/2016 which was dismissed by this Court vide order dated 21.11.2018. Pursuant to that the sale deed has also been executed in favour of the petitioners.

However, in the interregnum, during the pendency of the appeal the respondents filed the present suit for recovery of possession u/s 6 of the Specific Relief Act. It is this suit which has been decreed by the Civil Judge (Jr. Div.) Zira vide judgment and decree dated 5.1.2015 (Annexure P-1). Hence, present Revision Petition.

It is submitted by learned counsel for the petitioners that the sole basis on which the present suit has been filed by the respondents is the sale deed dated 19.12.1977 executed in their favour. However, said Sale Deed has already been declared as null and void and a sham transaction in the earlier civil suit filed by the petitioners for specific performance of the agreement dated 2.9.1977. It is submitted that in actual fact the present suit filed by the respondents was barred by *res judicata* as, the respondents were also impleaded as defendants in the said suit, and the sale deed on the basis of which defendants were claiming ownership over the suit property had already been declared as null and void and a sham transaction vide judgment and decree dated 17.11.2010. It is submitted that the said judgment and decree dated 17.11.2020 has attained finality.

It is submitted that petitioners have approached this Court by way of revision petition against the impugned judgment and decree dated 5.1.2015 in view of the fact that the appeal filed by the petitioners against the said judgment and decree dated 5.1.2015 (Annexure P-1) has been dismissed by the Ld. Additional District Judge Ferozepur by observing that though the respondents had not filed their suit specifically mentioning therein that their suit is under Section 6 of the Specific Relief Act, but keeping in view the relief claimed by them in the said suit, the same was treated under Section 6 of the Specific Relief Act; and therefore, in terms of the Section 6(3) of the Specific Relief Act the appeal filed by the petitioners was not maintainable.

Learned counsel for the respondents submits that there is no denying the above factual position which is amply borne out from the record of the case.

Heard Ld. Counsel for the parties.

In view of the facts as canvassed hereinabove, which have not been denied by the learned counsel for the respondents the present revision petition is allowed, and the impugned judgment and decree dated 5.1.2015 (Annexure P1) passed by the Civil Judge (Jr.Div.) Zira is set aside.

Application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

19.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No