

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.6409 of 2015(O&M)

Date of Order:09.10.2023

Vijay Kalia and another

.Petitioners

Versus

Kamal Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhisham Kumar, Advocate,
for the petitioners.

Mr. G.S.Punia, Sr. Advocate, with
Mr. P.S.Punia, Advocate
for the respondent.

ANIL KSHETARPAL, J

The petitioners herein are Judgment Debtors. They entered into an agreement to sell with respect to 8 marlas plot with the respondent on 27.04.2004, on receipt of Rs.1,00,000/- as an earnest money. The sale deed was to be executed on 27.07.2004. Subsequently, the respondent-decree holder filed a civil suit for grant of decree of possession by way of specific performance of the agreement to sell. During the pendency of the suit, the parties entered into a settlement. The total amount of sale consideration was increased from Rs. 10,00,000 to Rs.15,00,000/-. It was undertaken by the petitioners that they will get the mutation of the property sanctioned in their name and informed the decree holder, who would thereafter get the sale deed executed. The mutation in favour of the petitioners is stated to have been sanctioned in the month of September, 2013. The decree holder came to know of the aforesaid mutation and therefore sent a notice to the judgment debtors, however, the judgment debtors did not respond to the notice which

forced the decree holder to file execution petition. In the aforesaid execution petition, the judgment debtors filed objection petition claiming that the decree holder failed to honour the compromise decree. The Court on appreciation of fact has found that it is the petitioners, who are not coming forward to honour the decree.

This revision petition has been filed to challenge the correctness of the order passed by the Executing Court.

The learned counsel representing the petitioner submits that as per the clause 5 of the Settlement deed, the decree holder was required to pay the amount within a period of 45 days of the mutation and since he failed to comply with the same, therefore, as per the deed of compromise, there cannot be any execution of the decree.

This Court has considered the submissions. The execution of the deed of settlement dated 12.08.2013 is not in dispute between the parties.

Clause 3, 4 and 5 of the settlement deed read as under:-

“3. That now as per the compromise parties have fixed the amount of said agreement to sell as Rs.15,00,000/- instead of Rs.10,00,000/-. After adjusting the earnest amount of Rs. 1 Lac party No.1 is bound to pay the remaining amount to the tune of Rs. 14 Lac to the Party No.2 at the time of executing the registry.

4. That party No.2 admits the date of agreement to sell i.e. 27.04.2004 as correct and is be bound to get the registry executed in the favour of Party No.1, after sanctioning of mutation in their name within 45 days. If Party No.2 do not get the registry executed then Party No.1 will have right to get the

registry executed through court. Regarding this Party No.2 will be bound to appear before the court and get the decree passed in the pending suit and they will be bound to appear before the court for giving their statement. Party No.2 will borne all the expenses incurred at the time of sanctioning of the mutation and possession of this property is still coming in the name of Party No.1.

5. That at the time of executing the registry if party No.1 will not pay Rs.14 Lakhs to Party No.2 then this deal will be considered as cancelled and amount paid as earnest money will be forfeited.”

On a careful reading of Clause 4, it is evident that party No.2 to the settlement deed was required to execute the sale deed within a period of 45 days from the date of mutation in their favour. There was no corresponding duty on the plaintiff. It is not in dispute that the mutation of the property was sanctioned in favour of the petitioners (judgment debtors) in the last week of September, 2013. The respondent sent a notice to the petitioners in the first week of October, 2013. Thereafter, they filed an execution petition in February, 2014. There is absolutely no substance in the argument of the learned counsel representing the petitioners because the settlement deed, which later on became a part of the decree, does not provide that if the plaintiff (decree holder) fails to pay the amount within 45 days, the sale deed would not be executed in his favour. In fact, the responsibility was placed on the petitioners (judgment debtors).

Moreover, a separate suit filed by the petitioners for the grant of decree of declaration that the agreement to sell is deemed to have been

cancelled has also been dismissed on 10.10.2017, against which the appeal is stated to be pending.

Be that as it may.

Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

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

October 09, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO