

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

CR-8038-2017(O&M)

Date of decision:-12.1.2023

Anu Sharma

...Petitioner

Versus

Savitri Devi and others

...Respondents

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

Present: Mr.Abhilaksh Grover, Advocate
for the petitioner.

Mr.Prem Chand Chaudhary, Advocate for
Mr.Munish Jolly, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Savitri Devi and others had brought a Civil Suit No.554 of 18.12.2009 for possession by way of specific performance of agreement to sell dated 8.4.2008 with regard to 9 bighas 4 biswas and 10 biswasis of the land situated at village Janetpur, Tehsil Derabassi, District SAS Nagar(Mohali). After contest that suit was decreed by the Court of Additional Civil Judge (Sr.Divn.), Derabassi on 28.10.2014.

2. Feeling aggrieved by the said judgment and decree, defendant Anu Sharma had filed an appeal before District Judge, SAS Nagar(Mohali). She had filed an application for staying operation of judgment and decree passed by the Lower Court. Nevertheless the plaintiffs/decreed/holders filed an execution petition in the Court of

Addl.Civil Judge(Sr.Divn.), Derabassi, which was entertained and notice was ordered to be issued to defendant/JD. However, before the presence of defendant/JD could be procured, the execution application was dismissed in default for non-appearance of the decree holders/their counsel on 21.11.2015. However, on 26.11.2015 on application having been filed by the decree-holders, the execution application was restored and original record was ordered to be summoned. The Court had fixed the case for arguments. The grouse of the defendant/JD is that no notice was issued to her when execution application was filed or when after its dismissal, an application for restoration of the execution application was moved. Therefore, order passed in the execution application are null and void and deserve to be set aside.

3. According to the revision petitioner/defendant/JD on 11.4.2017, Sh.Kuldip Singh, Steno working in the Court of Addl.Civil Judge(Sr.Divn.), Derabassi was appointed as Local Commissioner for execution and registration of the sale deed in favour of the decree-holders without waiting for outcome of appeal pending before Additional District Judge, SAS Nagar(Mohali) and no opportunity was given to the defendant/JD to file objections to the draft sale deed, rather it was approved in absence of the revision petitioner/JD. Thereafter, the Executing Court issued warrants of attachment against defendant/JD for the purpose of delivering possession of the land to the decree-holders.

4. Feeling aggrieved, the defendant/JD has approached this Court by way of filing the revision petition, notice of which was given to the respondents/plaintiffs/decreed-holders, who have put in appearance

through counsel.

5. I have heard learned counsel for the parties besides going through the record and I find that the revision petition is absolutely without merit.

6. With regard to the objections put forward by the revision petitioner, firstly non-issuance of notice with regard to filing of execution application to him, the same was not required since as per Section 21 Rule 22(a) CPC with regard to filing of execution application relating to a decree, which was passed less than two years earlier, no notice is needed to be given to the JD. Despite that, even as per own case of the revision petitioner, the Executing Court had issued notice to the defendant/JD though she had not put in appearance in the Court when the application was dismissed for non-prosecution on 21.11.2015. It being so, there was no necessity of issuing notice of application for restoration of execution application to the defendant/JD and no fault can be found with the order passed by the Executing Court with regard to restoration of execution application.

7. Another objection put forward on behalf of the revision petitioner is that appeal filed by her against the judgment and decree passed by the trial Court was pending before Additional District Judge, SAS Nagar(Mohali) despite that the plaintiffs/decreed-holders filed the execution application, which was duly entertained by the Court of Addl.Civil Judge(SD), Derabassi and decree was got executed.

8. This objection is also without any merit. The law is well settled that merely by filing an appeal against the judgment and decree

passed by the trial Court, the operation of judgment and decree of the trial Court does not get stayed unless a specific order in that regard is passed by the Appellate Court, which in the instant case was not there. The Executing Court was justified in proceeding with the execution of the decree in absence of any stay order granted by the Appellate Court, where the appeal filed by the defendant/JD is stated to be pending. The revision petitioner is unnecessarily finding faults with the execution proceedings. With no stay order having been granted by the superior Court, the plaintiffs/decrees-holders were justified in reaping fruits of the decree passed in their favour.

9. Even otherwise the rights of the revision petitioner/defendant/JD are adequately protected in view of Section 144 CPC, which provides that when a decree is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order etc.

10. Therefore, the execution of sale deed in favour of the decree-holders/plaintiffs on the basis of decree for specific performance passed in their favour and delivery of possession, if any, shall not prejudice the revision petitioner in any manner because if she ultimately succeeds in appeal, the benefit drawn by the decree-holders-plaintiffs under the decree shall be got restored to the defendant/JD.

11. There is absolutely no merit in the revision petition and the same stands dismissed accordingly.

Interim order passed in this case on 24.11.2017 stands hereby vacated.

12.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No