

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8544-2015 (O&M)
Date of decision: 08.05.2023

Mohd. Ashraf

...Petitioner

VS

Gafoor Mohd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mohd. Yousaf, Advocate,
For the petitioner.

None for the respondent.

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 11.09.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Malerkotla, whereby execution application moved by petitioner was dismissed being fully satisfied even though no physical possession was delivered to petitioner/decreed holder of the plot in dispute according to the sale deed.

2. Learned counsel for petitioner submits that respondent entered into an agreement to sell with petitioner for the sale of his plot measuring 3 Biswas for consideration of Rs.20,000/- per Biswa vide agreement to sell dated 21.09.2004 (Annexure P-1). Respondent received Rs.20,000/- as earnest money and remaining amount was to be paid on the date of execution of sale deed. When respondent failed to execute the sale deed, petitioner filed a suit for specific performance against the respondent on the basis of agreement to sell. The said suit of the petitioner was decreed vide

judgment and decree dated 21.08.2012 (Annexure P-2). Respondent was given two months' time to execute the sale deed after deposit of remaining amount by the petitioner. Thereafter, petitioner deposited the remaining sale consideration on 03.09.2012, but respondent did not execute the sale deed. Beleaguered petitioner, as he then was, filed an execution application. Learned Executing Court got the sale deed (Annexure P-4) executed in favour of petitioner on 17.04.2015. Thereafter, learned Executing Court directed the Collector, Malerkotla to deliver the symbolic possession of the plot as mentioned in the sale deed to petitioner instead of physical possession.

3. There is no representation on behalf of respondent. I have heard learned counsel for petitioner and gone through the case file.

4. Revision petition was filed sometime in the year 2015 and notice was issued on 17.12.2015 by a Coordinate Bench of this Court presided over by my learned sister Ritu Bahri, J., (as she then was seized of the matter), by passing the following order:

“Learned counsel inter alia contends that the suit of the petitioner was decreed against the respondent on the basis of agreement to sell dated 21.09.2004 and the petitioner deposited the remaining sale consideration on 03.09.2012 but the respondent failed to execute the sale deed in favour of the petitioner and thus the petitioner filed an execution application on 05.02.2012 but the learned Executing Court wrongly gave direction to the Collector Malerkotla to deliver the symbolic possession to the petitioner and thereafter file was consigned to record room.

Learned counsel submits that once the respondent has sold the plot to the petitioner, the Executing Court should have given direction to deliver the physical possession of the plot.

Notice of motion for 19.02.2016.”

5. *Apropos*, on resumed hearing, Mr. Pardeep Bajaj, Advocate caused appearance on behalf of respondent and subsequently matter was taken up on 16.05.2016 and it was adjourned for arguments and eventually

pursuant to order passed on 19.04.2017, matter was referred to Mediation and Conciliation Centre of this Court to explore the possibility of settlement. Parties were specifically directed to remain present before the said Forum on 15.05.2017. However, record of the mediation proceedings reveals that respondents chose not to appear. Resultantly, there was no fruitful outcome and the matter was referred back before this Court. It was taken up on 14.10.2019, when none appeared for either side and it was adjourned to 23.03.2020. As it happened, due to the intervening pandemic outbreak, the work was suspended in the High Court and the case could not be listed for hearing. On resumption of work, it was first time listed on 20.02.2023 when once again none appeared and notice was issued to learned counsel for the parties for today.

5.1. None appears for respondent today. It appears that by sheer passage of time respondent has lost interest in contesting the revision petition and his deliberate non-appearance before learned Mediator and subsequently having abandoned the case even when it was put up for hearing before this Court is deeming suggestive that he has no serious opposition to the revision petition being allowed.

6. Having had the assistance of learned counsel for petitioner and after perusal of the decree sheet, I am of the view that impugned order is not sustainable and deserves to be set aside on the sole ground that decree does not envisage that possession has to be symbolic and the impugned order by some legal fiction has dismissed the execution petition on the premise that since the symbolic possession has been handed over, therefore, decree stands satisfied.

7. In this context, decree sheet itself is being reproduced herein below:-

XXX XXX

“(A) Suit for possession by way of specific performance of agreement to sell dated 21.09.2004 and writing dated 08.07.2005 of land measuring 0-3 biswas i.e. 3/564 share out of land measuring 28 bighas 4 biswas comprising of Khewat Khatouni No.8/24 to 30Khasra Nos. 352/270/10-10, 970/438/325/2/1-9, 984/329 min/10-1and 440/330 /2/5-14 bounded as:

On one side-54Property of Gafoof; on the Second Side - 54' Property of Rehmat, on the third third Side-25Property of Gafoor and on the fourth Side- 25 Drain situated opposite Nala Drain Jamalpura, Malerkotla along with all other rights attached with the land for consideration of Rs.60,000/- (Rupees Sixty thousands) and on payment of Rs.35,000/- after adjusting Rs.25,000/- already received as earnest money by the defendant from the plaintiff vide agreement to sell dated 21.09.2004 and writing dated 08.07.2005 and on the sale and registration expenses to be borne by the plaintiff;

(B) Suit for permanent prohibitory injunction restraining the defendant from alienating by way of sale, mortgage, gift, exchange or in any other manner, the land fully described in heading (A) of the plaint along with all other rights attached with the said land situated in the revenue estate of village Jamalpura Tehsil Malerkotla, to any other person except the plaintiff or any other relief.

IN THE ALTERNATIVE

Suit for recovery of Rs.50,000/- detailed as under:

Rs.25,000/as earnest money

Rs.25,000/- as damages together with pendent lite and future interest at the rate of 2% per month from this day of filing of the suit till realization of the decretal amount on the land fully described in heading (A) of the plaint or any other relief.

Value of the suit for the purpose of jurisdiction is Rs.110130/-

Value of the suit for the purpose of Court fee is Rs.2,942.60/-

This suit is coming on this 21 day of August2012 for final disposal before me (Rahul Kumar PCS Civil Judge (Junior Division, Malerkotla) in the presence of Shri Taj Mohd Khilji Adv Ld Counsel for the plaintiff, Shri K.S Sohi Adv Ld Counsel for the defendant. It is ordered that of the plaintiff is decreed with costs and the plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 21.09.2004 with regard to the suit land, fully detailed in head note A of the plaint and the defendant is directed to execute the sale deed of the suit land and get it registered in favour of the plaintiff, within a period of three months from today on receipt of the balance sale consideration, failing which, the plaintiff shall have right to execute and register the sale deed in his favour

through Court of law. The plaintiff is also directed to deposit the remaining balance sale consideration within two months from today. The suit of the plaintiff is also decreed for the relief of permanent injunction and the defendant is restrained from alienating the suit land, fully detailed in head note 'A' of the plaint, in any manner to any other person except the plaintiff.

COSTS OF SUIT

<i>Plaintiffs</i>	<i>Amount</i>	<i>Defendants</i>	<i>Amount</i>
<i>1. Stamp for plaint</i>	<i>2942.60</i>	<i>1. stamp for counter claim</i>	<i>----</i>
<i>2.stamp for power</i>	<i>2</i>	<i>2. Stamps for power</i>	<i>2</i>
<i>3. Stamp for petition and affidavits</i>	<i>---</i>	<i>3.Stamp for petition and affidavits</i>	<i>--</i>
<i>4. Costs of Exhibits including copies made under the banker's book Evidence Act, 1891</i>	<i>NIL</i>	<i>4. Costs of Exhibits including copies made under the banker's book Evidence Act, 1891.</i>	<i>---</i>
<i>5. Pleader's fee</i>	<i>500-40</i>	<i>5. Pleader's fee</i>	<i>500-00</i>
<i>6.Subsistence and traveling allowance of witness, including those of party, if allowed by the judge</i>	<i>300</i>	<i>6. Subsistence and traveling allowance of witness, including those of party, if allowed by the judge</i>	<i>--</i>
<i>7.Process Fee</i>	<i>56/-</i>	<i>7. Process fee</i>	<i>5</i>
<i>8. Commissioner's Fee</i>	<i>--</i>	<i>8. Commissioner Fee</i>	<i>---</i>
<i>9. Demi paper</i>	<i>---</i>	<i>9. Demi paper</i>	<i>--</i>
<i>10.Cost of transmission of records</i>	<i>---</i>	<i>10.Cost of transmission of records</i>	<i>---</i>
<i>11.Other costs allowed under the code and General Rules and orders a) For time spent by the successful party</i>	<i>34/-</i>	<i>11.other costs allowed under the code and General Rules and orders a) For time spent by the successful party</i>	<i>10/-</i>
<i>Total</i>	<i>3834.60</i>	<i>Total</i>	<i>517</i>

Given under my hand and seal of the Court today the 21st day of august, 2012.

*Sd/- (Rahul Kumar), PCS
CJ (JD), Malerkotla*

8. For better appreciation, what was meant therein was clear i.e., 'handing over of the possession' and to add the word 'symbolic' by learned Executing Court would be altering/modifying the decree. Though words 'physical possession' is not mentioned but when read in its entirety, since description of the immovable property has been given in the decree sheet itself unless the same is physically handed over, the delivery of mere symbolic possession of the same cannot be treated as satisfaction of the decree for delivery of actual physical possession.

9. In the premise, impugned order is set aside and the execution petition is revived with liberty to petitioner to appear before learned Executing Court with an application for fixing the date of hearing by issuing notice to judgment debtor to satisfy the decree in its entirety.

10. Needless to say that further proceedings before learned Executing Court to take place, in accordance with law.

11. Disposed of accordingly.

12. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

08.05.2023
vandana

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