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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-480-2022 (O&M)
Reserved on : 01.02.2023
Date of Decision: 08.02.2023

Meenakshi Gupta

....Petitioner

VERSUS

Raj Kumar and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anuj Garg, Advocate for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. Tara Dutt, Advocate for respondent Nos.1 and 2.

Mr. Aditya Pratap Duggal, Advocate for respondent No.5.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 10.01.2022 and short *zimni* order dated 10.01.2022.

The brief facts relevant to the present *lis* are that on 22.09.2009 one Manjit Singh, respondent No.3 herein, through his Power Attorney holder, Arun Gupta (respondent No.4 herein) entered into an agreement to sell in favour of respondent Nos.1 and 2 herein with respect to Industrial Shed No.D-3, Phase 5, Mohali measuring 2 kanals. On 03.08.2011 a suit for specific performance of the agreement to sell dated 22.09.2009 was filed by respondent Nos.1 and 2 herein against the petitioner herein as well as respondent Nos.3 to 5. It is apt to mention that Meenakshi Gupta, petitioner

herein, is the wife of Arun Gupta, respondent No.4 herein. In the suit, a written statement was filed on behalf of defendant Nos.1 and 2 (Manjit Singh and Arun Gupta) by Arun Gupta on his own behalf and as a GPA holder of Manjit Singh. A separate written statement was filed by Meenakshi Gupta, petitioner herein. In the written statement filed by Meenakshi Gupta a specific plea was raised that she was not a signatory to the agreement to sell dated 22.09.2009 and was not bound by the agreement to sell. It was further averred that she had 49% share in M/s Chemical and Mechanical Engineering Industries and that the property in dispute stood in the name of M/s Chemical and Mechanical Engineering Industries and that she was a co-allottee to the extent of 49%. Vide judgment and decree dated 19.05.2015 the Trial Court decreed the suit in favour of respondent Nos.1 and 2 herein and directed respondent Nos.3 and 4 herein (Manjit Singh and Arun Gupta) to execute the transfer deed in favour of respondent Nos.1 and 2 within a period of one month. The Trial Court while decreeing the suit inter-alia held as under :

“27. So the defendants no.1 to 3 and defendant no.4 have unnecessarily confused the matter by alleging that in the suit property the defendants no.1 and 2 have 51% share and the defendant no.3 has 49% share. In fact, from the entire documents available on the file and as per the record of defendant no.4, the share holding of 51% and 49% are with regard to firm having name M/s Chemical & Mechanical Engineering Industry only and this share does not mean that they have shares as such in the suit property, rather, the suit property is wholly

owned as lessee by the defendant no.1 only and the agreement is also with regard to the transfer of lease rights in the suit property and actual ownership vests with the defendant no.4 only. In the document Ex.D2 dated 28.10.1988 also, the defendant no.2 has nowhere mentioned about his alleged 51% share in the suit property being attorney holder of defendant no.1 and the plaintiffs have proved that the time for completion of the bargain was extended from time to time vide documents Ex.P3 to Ex.P6 and the final date fixed for completion of bargain was 30.06.2011, on which date, the plaintiffs remained present in the Office of Executive Magistrate, Mohali, to perform their part of the agreement. The defendants no.1 and 2 have nowhere taken the plea in the written statement that the plaintiffs were not ready and willing to perform their part of the agreement and were not having balance sale consideration as alleged in the written arguments as well as oral submissions. So this plea cannot be available to the defendants and no such plea regarding forging of signatures has been taken by the defendants no.1 and 2 and even no witness has been examined by the defendants no.1 and 2 to prove that his signatures have been forged by the plaintiffs anywhere in the departmental correspondence. Even otherwise nothing favourable to the defendants came out from the cross-

examination of the plaintiffs and the written arguments submitted by the defendant no.2 for himself and being attorney holder of defendants no.1 and 3 are not tenable. There is no supporting evidence.”

The said judgment and decree dated 19.05.2015 was challenged in an appeal by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta) before the Appellate Court which appeal also came to be dismissed vide judgment and decree dated 20.11.2018. Against the said judgment and decree dated 20.11.2018 a regular second appeal being RSA No.1189 of 2019 was preferred by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta). Vide judgment dated 10.07.2019 the said appeal was dismissed by this Court and eventually stood affirmed by the Hon’ble Supreme Court vide order dated 20.01.2020 passed in SLP No.1066 of 2020.

During the pendency of the regular second appeal, the petitioner (Meenakshi Gupta) filed a suit for declaration to the effect that she was owner to the extent of 49% in the Industrial Shed No.D-73, Phase 5, Mohali measuring 2 kanals and that the judgments and decrees dated 19.05.2015 and 20.11.2018 did not affect her ownership and possessory rights. An application under Order 7 Rule 11 CPC was filed by respondent Nos.1 and 2 herein in the said suit which application was dismissed vide order dated 30.10.2021. Against the said dismissal, CR No.2944 of 2021 is pending before this Court in which further proceedings before the Trial Court have been stayed. Interestingly, after the dismissal of SLP No.1066 of 2020 on 20.01.2020, respondent No.4 (Arun Gupta) also filed a suit for declaration to the effect that respondent No.3 (Manjit Singh) had not been heard for the last 7 years by those who would have naturally heard if he had been alive

and therefore the GPA and the SPA be cancelled. The said suit is pending. Meanwhile, after dismissal of the appeal by the lower Appellate Court on 20.11.2018, an execution petition was filed by respondent Nos.1 and 2 herein. In the said execution application, various applications were filed by the judgment debtors as is apparent from the impugned order dated 10.01.2022 by which order as many as ten applications were disposed off out of which eight were filed by the judgment debtor/petitioner (Meenakshi Gupta) and M/s Chemical and Mechanical Engineering Industries. Vide the impugned order it was also held that the claim of the decree-holder was genuine and the decree-holder was entitled to get the relief. As per the impugned order, the petitioner (Meenakshi Gupta) filed the following applications which have been decided :

- i) application dated 03.02.2020 to direct the decree-holder to admit facts, documents and interrogatories;
- ii) application/objections dated NIL under Order 21 Rules 98 to 103 CPC;
- iii) additional objections dated 31.10.2019 under Order 21 Rules 98 to 103 CPC with a prayer to stay the execution proceedings till their final decision;
- iv) application dated 08.10.2021 to direct judgement debtor No.4 to admit or deny the facts/documents/interrogatories under Order 12 Rules 4 and 5 CPC.

All the above mentioned four applications moved by the petitioner (Meenakshi Gupta) have been dismissed. Aggrieved by the said order, the present revision petition has been preferred.

Learned counsel for the petitioner would contend that the petitioner herein though impleaded as a party in the civil suit, no relief was claimed against her. However, she has been impleaded as a party in the execution application and hence the Court ought to have deleted her name. Learned counsel for the petitioner has contended that there was no executable decree passed against the petitioner. It is further the contention that the execution petition also be dismissed qua 49% share owned by the petitioner herein.

Per contra, learned Senior counsel appearing on behalf of respondent Nos.1 and 2 i.e. contesting respondents, has contended that all arguments raised by learned counsel for the petitioner were raised on behalf of the petitioner while appearing in the suit and the same stood rejected upto the Supreme Court. It is further the contention that the specific case of the petitioner herein was that she is the owner to the extent of 49% and therefore, the agreement to sell to which she was not a signatory was not enforceable in law at least qua her rights. Learned Senior counsel has referred to the findings of the Trial Court as well as this Court in RSA No.1189 of 2019 to contend that the said arguments stood rejected. Learned Senior counsel has further pointed out that novel methods are being adopted to deprive the decree-holder of the fruits of his decree. Learned Senior counsel has further pointed out that earlier Civil Revision No.645 of 2022 was filed on behalf of M/s Chemical and Mechanical Engineering Industries through Meenakshi Gupta (petitioner herein). The said revision petition was

dismissed vide a detailed order dated 30.11.2022. It is further the contention that in the objection petition filed by the petitioner, yet again, the objection has been raised that her name be deleted as there was no decree against her and hence execution be dismissed qua 49% share of the petitioner.

Heard.

This is a classic case where a decree-holder is being made to run from pillar to post in order to reap the fruits of a decree in his favour. Before adverting to the merits of the present case and dealing with the arguments raised by the counsel, brief facts need to be noticed. In the present case respondent Nos.1 and 2 entered into an agreement to sell dated 22.09.2009 with respondent No.3 (Manjit Singh) through his power attorney holder respondent No.4 (Arun Gupta) with regard to an industrial plot in Industrial Area, Phase 5, Mohali measuring about 2 kanals. On 03.08.2011 respondent Nos.1 and 2 filed a suit for possession by way of specific performance of agreement to sell dated 22.09.2009. A separate written statement was filed by respondent No.4 (Arun Gupta) on his behalf and on behalf of respondent No.3 (Manjit Singh) as his GPA/SPA holder. The petitioner herein, who is also the wife of respondent No.4 (Arun Gupta), filed a separate written statement. In the said written statement the petitioner (Meenakshi Gupta) took a specific stand that she was a co-allottee with respondent No.3 (Manjit Singh). It was averred by her that she was owner to the extent of 49% share and that Manjit Singh and Arun Gupta (respondent Nos.3 and 4 respectively) were owners to the extent of 51% share. The Trial Court decreed the suit on 19.05.2015 specifically holding that the petitioner was not a co-allottee and the property stood in the name of respondent No.3 (Manjit Singh). It was further held that the papers of the firm M/s Chemical

and Mechanical Engineering Industries were appended with the reply wherein the petitioner had 49% share. It was further held that merely because she had 49% share in the firm, M/s Chemical and Mechanical Engineering Industries, did not mean that she had a share in the suit property and that the suit property was wholly owned as lessee by respondent No.3 (Manjit Singh). Aggrieved by the said judgment and decree dated 19.05.2015, an appeal was preferred by respondent Nos.3 and 4 (Manjit Singh and Arun Gupta respectively) which appeal was dismissed vide judgment and decree dated 20.11.2018. Aggrieved by the judgments and decrees passed by the Trial Court and the lower Appellate Court, respondent Nos.3 and 4 preferred RSA No.1189 of 2019 in this Court which was also dismissed vide judgment dated 10.07.2019. Thereafter, respondent Nos.3 and 4 (Manjit Singh and Arun Gupta respectively) approached the Hon'ble Supreme Court and the Special Leave Petition (SLP No.1066 of 2020) preferred by them was also dismissed on 20.01.2020. In the judgment passed by this Court on 10.07.2019 in RSA No.1189 of 2019, it was specifically noted that the plea taken by the defendants that Meenakshi Gupta (petitioner-herein) was a co-allottee in the plot along with respondent No.3 (Manjit Singh) was rejected observing that the suit property stood in the name of defendant No.1 (Manjit Singh) and was not transferred in the name of defendant No.3 (Meenakshi Gupta) and, as such, the latter could not be termed as a co-allottee in the suit property. The said judgment attained finality inasmuch as the SLP preferred against it was dismissed on 20.01.2020.

During the execution proceedings, as many as ten applications were preferred. Vide the impugned order, all the ten applications were

disposed off. The Executing Court took up the four applications filed by the petitioner (Meenakshi Gupta) together. While dealing with the said applications, the Executing Court held that all the said issues had been raised in the civil suit and the petitioner (Meenakshi Gupta) had chosen not to challenge the judgment and decree dated 19.05.2015 passed by the Trial Court in the suit for specific performance.

It may be mentioned here that two applications filed by M/s Chemical and Mechanical Engineering Industries were taken up together by the Executing Court - one application for placing on record certified copy of application under Order 12 Rule 5 CPC; and second application being objections under Order 21 Rules 98 to 103 CPC. The said application being objections under Order 12 Rule 5 CPC were filed by M/s Chemical and Mechanical Engineering Industries through Meenakshi Gupta, its partner, who is also the present petitioner. The Executing Court held that judgement debtor-respondent No.3 (Manjit Singh) was held to be 100% owner of the suit property as was held by the civil court in the suit for specific performance.

While deciding the four applications moved by the petitioner (Meenakshi Gupta) the Executing Court held that :

“10. I have taken these four applications together for the sake of saving repetitions. In the first application the JD Meenakshi Gupta has prayed to this court that the decree holder may be ordered to admit the facts/documents/interrogatories mentioned in this application dated 03.02.2020 filed by her being posing herself as third party objector. In the second application

which JD Meenakshi Gupta has filed having dated NIL vide which she has made few objections to the execution petition under Order 21 Rule 98 to 103 CPC, in the third application dated 31.10.2019 JD-Meenakshi Gupta has taken few additional objections to the execution petition and has also prayed for staying the proceedings of the execution petition in hand till the final decision of this application and in the fourth application filed by her on 08.10.2021 she has prayed to give directions to JD No.4 to admit or deny the facts, documents, interrogatories under Order 12 rule 4 & 5 CPC. I have gone through all these four applications very carefully that too fact wise and I found that in all these four applications, the JD Meenakshi Gupta has repeatedly produced the similar facts which have already been finally decided upto the level of Hon'ble Supreme Court of India as has been discussed in detail above. Moreover, as has been discussed above, the main technical point is that when JD No.3 namely Meenakshi Gupta was the main party to the suit titled as "Raj Kumar Vs. Manjit Singh" i.e. Civil Suit No.214 of 03.08.2011 which has been finally decided on 19.05.2015 by the court of Sh. Shiv Mohan Garg the then Civil Judge (Sr. Division), Mohali qua which this execution petition has been filed and under the circumstances when the said suit was decided against

the said JD No.3 Meenakshi Gupta and inspite of it, she had not preferred any appeal against the said judgment/decreed dated 19.05.2015 and also under the circumstances that the fate of the said judgment and decree was finally decided in the favour of decree holder upto the level of Hon'ble Supreme Court of India then under what circumstances now at this stage JD No.3 namely Meenakshi Gupta has posed herself as third party objector and is having the locus-standi to contest this execution petition, specially when she has admitted the fact of said civil suit at its initial level. Not stopping on this, during the course of arguments the fact has also come to the notice of this court that said JD No.3 Meenakshi Gupta has also filed another civil suit bearing No.CS-165- 2019 again claiming the fact that she may be declared owner of the property in question upto the extent of 49% of its share, specially when the said fact has already been decided against her upto the level of Hon'ble Supreme Court of India and has attained finality. So, under these circumstances this court is having no hitch to hold the fact that the objections/applications stated above i.e. four in number cannot be taken into consideration at all because all the facts and circumstances mentioned/claimed in these applications/objections have already been decided finally and even the verdict of learned Trial Court has

also been duly admitted by the said JD No.3 i.e. Meenakshi Gupta, because she has not preferred any appeal against the basic judgment and decree of the trial court ever. It has also been held that the said JD No.3 namely Meenakshi Gupta very cleverly trying to twist and re agitate the basic fact in question which has already attained finality. When the basic applications/objections stated above filed by said JD No.3 Meenakshi Gupta cannot be taken into consideration on this technical score and even not on merits then the arguments and the citations relied upon by Ld. counsel for JD No.3 also cannot be taken into consideration. Hence, the four applications mentioned above filed by JD No.3 namely Meenakshi Gupta are ordered to be dismissed.”

In the present case the issues now sought to be raised by the petitioner are issues which were raised in the suit and they stand rejected. The judgment and decree dated 19.05.2015 passed by the Trial Court stands affirmed upto the Hon’ble Supreme Court. What in effect the petitioner is wanting is to re-open all the issues already agitated unsuccessfully right upto the Supreme Court, which cannot be permitted in law. The petitioner (Meenakshi Gupta) though stated that there was no relief claimed against her, chose to file a separate written statement and contest the suit raising a plea that she was a partner to the extent of 49% in the firm and hence, a co-allottee of the property. This argument was rejected and it was categorically held that respondent No.3 herein (Manjit Singh) was the only allottee of the

suit property and that though the petitioner herein (Meenakshi Gupta) was a partner to the extent of 49% in the firm - M/s Chemical and Mechanical Engineering Industries - however, it could not be said that she was an allottee in the suit property. The very argument that the suit property was owned by the firm was also negated. By way of the present objections the entire case cannot be re-opened and re-agitated. The petitioner (Meenakshi Gupta) claiming herself to being a partner to the extent of 49% share in the firm - M/s Chemical and Mechanical Engineering Industries - was satisfied with the judgment and decree passed by the Trial Court on 19.05.2015 and chose not to challenge the same in appeal. The same was challenged in appeal by respondent Nos.3 and 4 herein (Manjit Singh and Arun Gupta). This Court while dismissing RSA No.1189 of 2019 specifically held that :

“Both the Courts below considering the facts and circumstances of the case, pleadings of the parties and evidence available on record brought by the parties have returned findings that plaintiffs are entitled to possession of the suit property by way of specific performance of agreement dated 22.9.2009 on payment of balance consideration. The plea taken by the defendants that defendant No.3 Minakshi Gupta was co-allottee in the plot along with defendant No.1 – Manjit Singh was rejected observing that the suit property stands in the name of Manjit Singh – defendant No.1 and was not transferred in the name of defendant No.3, as such the latter could not be termed as co-allottee in the suit property.”

The stand that the petitioner (Meenakshi Gupta), who is none other than an alleged partner of the firm M/s Chemical and Mechanical Engineering Industries, was a co-allottee stood rejected and it was categorically held that respondent No.3 herein (Manjit Singh) was the sole lessee of the property in dispute.

This Court in CR No.645 of 2022 vide order dated 30.11.2022 has specifically dealt with the issue regarding the claim of ownership of 49% share of the petitioner in the firm M/s Chemical and Mechanical Engineering Industries. As noticed above, the arguments now pressed on behalf of the petitioner (Meenakshi Gupta) were raised in the proceedings arising out of the suit right upto the Supreme Court and stood negated. Even in CR No.645 of 2022 decided on 30.11.2022, the arguments were dealt with in detail and stood rejected and in fact the said revision petition (CR No.645 of 2022) was dismissed with costs of Rs.50,000/-. The present revision petition is nothing but an abuse of the process of law. Despite these very objections which were raised by M/s Chemical and Mechanical Engineering Industries through Meenakshi Gupta (petitioner herein) standing rejected, the present revision petition has been pressed on merits by the counsel for the petitioner.

In view of the above, I do not find any illegality or irregularity in the impugned orders. The present revision petition, which is wholly devoid of any merit, is accordingly dismissed with exemplary costs of Rs.1,00,000/- to be deposited with the Punjab State Legal Services Authority. It is made clear that in case the costs are not deposited within a period of three months from the date of passing of this order, the same shall be recovered as arrears of land revenue.

Dismissed. Pending applications, if any, also stand disposed off.

08.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO