

2023:PHHC:146755
152 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
ESA-9-2023 (O&M)
Date of decision: 17.11.2023

Bijender Gupta

....Appellant

Versus

Anil Kumar alias Anil Kumar Manik (deceased) through LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellant

Mr. Sham Lal Saha and
Mr. T.S.Chaudhari, Advocate for respondent no.1

Mr. Vishal Pundir, Advocate for
Mr. Govind Chauhan, Advocate for respondent no.3

ANIL KSHETARPAL, J (Oral)

1. This is Execution Second Appeal filed by the third party objector. The Executing Court, after considering the objections filed by the appellant, dismissed the same, which in appeal, has been affirmed by the First Appellate Court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Sh.Amit Kumar Manik filed a suit on 07.03.2012 for the grant of the decree for possession by way of the specific performance of the agreement to sell. The suit was decreed on 20.11.2017. In the aforesaid suit, appellant- Bijender Gupta appeared as DW2 on behalf of the defendants. The aforesaid decree has become final. In the execution petition, the aforesaid judgment

and decree is sought to be implemented. Sh.Bijender Gupta has filed a suit on 28.02.2018 for the grant of decree for the symbolic possession by way of the specific performance of the agreement to sell. Sh.Bijender Gupta claims that Nitin Kumar and others executed an agreement to sell on 09.09.2005. Sh.Bijender Gupta has not been granted any injunction in his independent suit filed by him, which is pending.

4. Learned counsel representing the appellant submits that before deciding the objection petition filed by the third party, it is mandatory for the Executing Court to frame issues and grant an opportunity to the objector to lead evidence. He relies upon the judgment passed in **Subhash Chander and another vs. Smt. Phoolwati and others' 2009 (3) PLR 700.**

5. On the other hand, the learned counsel representing the respondent contends that the appellant is claiming an agreement to sell in his favour from the judgment debtors. He submits that the appellant filed the suit after a period of nearly 13 years. He further submits that the appellant had the knowledge of the suit filed by the respondent-decree-holder as the appellant appeared as DW2.

6. This Court has considered the submissions and perused the paperbook. In this case, the appellant has not set up any independent title. He has filed a suit as well as the objection on the basis of the agreement to sell dated 09.09.2005.

7. On a Court question, the learned counsel representing the appellant failed to explain the reasons for filing the suit after a period of nearly 13 years.

8. This Court has carefully read the judgment passed in **Subhash Chander's case (supra)**. In the facts of the aforesaid case, the court found that to determine the rights of the parties, it is necessary to frame the appropriate issues and permit the parties to lead evidence. However, it is not necessary for the Executing Court to frame issues in each and every case. The Executing Court is required to analyze the objection petition filed by the third party and thereafter, form an opinion. In this case, the entire claim of the appellant is based on the agreement to sell, which is yet to be proved. He has not been granted any injunction in the independent suit filed by him. Moreover, the appellant had the knowledge of the pendency of the previous suit as he appeared in evidence on behalf of the defendants (judgment debtors). Hence, no ground to interfere is made out.

9. Dismissed.

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

17.11.2023

rekha

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No

(ANIL KSHETARPAL)
JUDGE