

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

113

CR-1459-2020(O&M)

Date of decision: 09.11.2023

Kashmir Singh

....Petitioner

Versus

Surjit Singh since deceased through his LRs

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rajeshwar Singh Thakur, Advocate for the petitioner.

AMARJOT BHATTI, J.

1. The petitioner-Kashmir Singh has filed civil revision under Article 227 of the Constitution of India praying the quashing of order dated 19.11.2019 (Annexure P-9) passed by learned Civil Judge (Junior Division), Gurdaspur vide which execution filed by the petitioner bearing No. CM-69-2016 titled as Kashmir Singh Vs. Surjit Singh has been illegally and erroneously dismissed.

2. The learned counsel for the petitioner has placed on record the copy of agreement to sell dated 25.06.2008 (Annexure P1) on the basis of which suit for possession by way of specific performance was filed which was dismissed vide judgment and decree dated 16.05.2012 which is Annexure P-2. Feeling aggrieved of this judgment and decree, Kashmir Singh-plaintiff filed an appeal which was decreed in his favour. Copy of judgment and decree dated 13.05.2015 is Annexure P-3. On this, Surjit Singh-defendant filed RSA No.2722 of 2016 which was declined vide judgment dated

17.11.2018 which is Annexure P-4. Thereafter, the execution was filed. The application under Order 21 Rule 32 CPC is Annexure P-5. The reply filed by the respondent is Annexure P-6. The respondent relied upon one sale deed dated 24.05.2006 which was executed by him in favour of Satnam Singh and Kashmir Singh sons of Balwinder Singh, which is Annexure P-7. During this period, Surjit Singh expired and his legal heirs were also impleaded as party to the case. The objections filed by judgment debtor were accepted on the basis of aforesaid sale deed dated 24.05.2006 and by passing impugned order dated 19.11.2019, the execution was dismissed. The learned counsel for the petitioner has placed on record copy of mutation No.424 (Annexure P-10) and referred to the endorsement in the remarks column clarifying that the judgment debtor had received property from Jagdish Singh & Jaspal Singh on the basis of oral exchange and regarding this property he had entered into an agreement to sell dated 25.06.2008 on the basis of which the suit was filed. The learned Executing Court has failed to consider this fact and has wrongly dismissed the execution by relying upon the sale deed dated 24.05.2006 which was executed much prior to the execution of agreement to sell dated 25.06.2008, which is Annexure P1. Therefore, the impugned order may kindly be set aside and the learned Executing Court may be directed to dispose of the execution as per law.

3. I have considered the arguments and have gone through the record relied upon by the petitioner/decreed holder. No purpose would be served by issuing notice to the respondent, now represented through his LRs as the entire claim of the petitioner is based on documents which are already on record. The perusal of record shows that the petitioner/plaintiff had filed

suit for possession by way of specific performance of agreement to sell dated 25.06.2008 (Annexure P-1) which was initially dismissed by the Court of learned Civil Judge (Junior Division), Gurdaspur vide judgment dated 16.05.2012(Annexure P-2). The appeal preferred by the appellant/plaintiff was accepted vide judgment dated 13.05.2015 (Annexure P-3) and the regular second appeal preferred by Surjit Singh was also dismissed vide judgment dated 17.11.2018 which is Annexure P-4. Thereafter, the execution was filed on the basis of judgment and decree passed by the First Appellate Court. Now by passing impugned order dated 19.11.2019, the learned Civil Judge (Junior Division), Gurdaspur observed that the sale deed is already executed in favour of decree holder on 24.05.2006. The matter regarding exchange deed is subjudice. The decree holder filed execution by concealing this fact as a result the execution was dismissed.

The above said observation by the learned Executing Court is not justified. The execution cannot be dismissed on the basis of aforesaid observation. The judgment passed in favour of decree holder by the First Appellate Court is confirmed by the Hon'ble High Court by passing judgement in RSA No.2722-2016 decided on 17.11.2018 which is Annexure P-4. The petitioner has placed on record copy of mutation No.424 (Annexure P-10) where there is reference of land mutated in favour of Surjit Singh on the basis of oral exchange. The sale deed which is referred in the impugned order is of earlier period whereas there is decree in favour of present petitioner on the basis of agreement to sell dated 25.06.2008 which is of later period.

Considering the aforesaid factual position, the impugned order passed by the learned trial Court dated 19.11.2019 is not justified and the

same is set aside and learned Executing Court is directed to decide the objections keeping in mind the aforesaid facts and to proceed in the execution as per law.

Accordingly, the present civil revision preferred by the petitioner-Kashmir Singh stands disposed of.

Pending application(s), if any, stands disposed of accordingly.

09.11.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

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