

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-1676-2020

Reserved on : 11.10.2023

Date of Decision: 23.11.2023

Jaswinder Singh

....Petitioner

VERSUS

Surinderpal Singh and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH**

Argued by : Mr. Naveen S. Bhardwaj, Advocate, for the petitioner.

Respondent No.1 in person.

Mr. Harsh Chopra and Mr. Aashish Chopra, Advocates,  
for respondent No.2.

\*\*\*\*\*

**KARAMJIT SINGH, J.**

Present revision petition has been filed by the petitioner/JD seeking setting aside of orders dated 1.2.2020 (Annexure P-7) and 20.1.2011 (Annexure P-8) both passed by the Court of Additional Civil Judge, Senior Division, Samrala.

2. Brief facts of the case are that respondents No.1 and 2 namely Surinderpal Singh and Karanbir Singh filed suit for specific performance of agreement to sell dated 21.2.1989 against petitioner-Jaswinder Singh, his brother Ujagar Singh and one Bharat Singh through his legal heirs. The said civil suit was decreed in favour of respondents No.1 and 2 vide judgment dated 23.8.2001 (Annexure P-1) and all the defendants were directed to join hands in execution and registration of the sale deed in favour of respondents No.1 and 2 within a period of next 2 months upon notice regarding deposit of balance sale consideration within the aforesaid period.

3. The petitioner and his brother Ujagar Singh filed an appeal

against the aforesaid judgment dated 23.8.2001 which was contested by respondents No.1 and 2 and was finally dismissed by the Court of Additional District Judge, Ludhiana vide judgment dated 15.11.2010. Regular second appeal filed by the petitioner and his brother was also dismissed by this Court vide judgment dated 13.12.2010. Even SLP filed by the petitioner against the judgment dated 13.12.2010 was dismissed by Hon'ble Supreme Court on 17.4.2018. After the dismissal of the first appeal as well as second appeal, respondents No.1 and 2 filed an application for permission to deposit balance sale consideration worth ₹ 4,37,000/-. The Court concerned gave necessary permission to the decree holders to deposit the balance sale consideration vide order dated 20.1.2011 (Annexure Ex.P8). Respondents No.1 and 2 also filed an application for execution of the decree passed by the learned trial Court on 23.8.2001 wherein the petitioner and his brother filed objection petition on the ground that the decree holders failed to deposit balance sale consideration within the prescribed period of 2 months given by the learned trial Court while passing the judgment and decree dated 23.8.2001 and thus, the agreement to sell has been rescinded on the ground of non-payment of balance sale consideration within the prescribed period. In the objection petition, it was also pleaded that the order dated 20.1.2011 (Annexure P-8) whereby permission was granted to the decree holders to deposit the balance sale consideration is also illegal as no notice of the concerned application which was filed after the expiry of the aforesaid prescribed period, was not given to the petitioner and his brother.

4. The objection petition was contested by the decree holders and after hearing both the parties, the said objection petition was dismissed vide

impugned order dated 1.2.2020 (Annexure P-7). The petitioner being not satisfied by the aforesaid orders, has filed the present revision petition.

5. I have heard the counsel for the parties.

6. Counsel for the petitioner has submitted that as per judgment dated 23.8.2001 (Annexure P-1) passed by the learned trial Court, direction was given to the defendants to execute the sale deed within next 2 months with direction to respondents No.1 and 2 to deposit the balance sale consideration within the stipulated period which would be less than 2 months. Counsel for the petitioner has further submitted that the first appeal filed by the petitioner was dismissed on 15.11.2010 whereas the decree holder sought permission to deposit the balance sale consideration on 19.1.2011 i.e. after the expiry of the aforesaid stipulated period provided by the learned trial Court as is evident from Annexure P-8. He has further submitted that in this manner, the agreement to sell has been rescinded on the ground of non-payment of balance sale consideration by the decree holders within the prescribed period. In this context, counsel for the petitioner has brought to the notice of this Court the provisions of Section 28 of Specific Relief Act which provides for rescission of agreement in such like situation.

7. Counsel for the petitioner has further contended that the impugned order (Annexure P-8) was passed at the back of the petitioner despite the fact that the concerned application for permission to deposit balance sale consideration was filed by the decree holders beyond the prescribed period provided by the learned trial Court while passing judgment (Annexure P-1). He has further submitted that impugned orders

(Annexures P-7 and P-8) are not sustainable and deserve to be set aside.

8. On the other hand, counsel for respondents No.1 and 2, while supporting the impugned orders, has *inter alia* contended that the judgment passed by the learned trial Court has merged with the judgments passed by the appellate Courts as has been held by Hon'ble Supreme Court in **Chandi Prasad v. Jagdish Prasad** (2004) 8 SCC 724. It has been further contended that in the instant case, balance sale consideration was deposited immediately after the dismissal of the regular second appeal as is evident from Annexure P-8, after getting necessary permission from the Court concerned. It being so, question of rescission of agreement does not arise at all. Counsel for respondents No.1 and 2 has further submitted that there is no illegality or infirmity in the impugned orders.

9. I have considered the submissions made by the counsel for the parties.

10. Admittedly, the suit for specific performance of agreement to sell dated 21.2.1989 was decreed vide judgment dated 23.8.2001 (Annexure P-1). The appeal filed by the petitioner against the said judgment was dismissed by the first appellate Court vide judgment dated 15.11.2010 and thereafter, regular second appeal filed by the petitioner was dismissed by this Court vide judgment dated 13.12.2010 and the SLP filed by the petitioner was also dismissed by Hon'ble Supreme Court on 17.4.2018.

11. As per law laid down by Hon'ble Supreme Court in **Chandi Prasad's** case (supra) which has been further relied upon by Hon'ble Supreme Court in **Surinder Pal Soni v. Sohan Lal (D) through LRs** 2019 (3) RCR (Civil) 883 when an appellate Court passes a decree, the decree of the trial Court merges with the decree of the appellate Court and even if and subject to any modification that may be made in the appellate decree, the

decree of the appellate Court supersedes the decree of the trial Court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial Court.

12. In the instant case, upon decision dated 15.11.2010 passed by the Court of Additional District Judge, Ludhiana, there was merger of judgment of the trial Court dated 23.8.2001 and further, the judgment of the first appellate Court merged into judgment dated 13.12.2010 whereby regular second appeal filed by the petitioner was dismissed by this Court. Immediately, thereafter, respondents No.1 and 2 moved an application seeking permission to deposit the balance sale consideration and the Court concerned gave its permission in this regard vide order dated 20.1.2011. In light of law laid down by Hon'ble Supreme Court in Surinder Pal Soni's case (supra), there is no illegality in the impugned order (Annexure P-8) dated 20.1.2011 whereby permission was given to respondents No.1 and 2 by the Court concerned to deposit the balance sale consideration, even if the said order was passed at the back of the petitioner. The reason being the request to deposit the balance amount was made in writing on behalf of the said respondents within a period of just about one month of the dismissal of the regular second appeal. Respondents No.1 and 2 acted in a bonafide manner to show their willingness to get execute the decree dated 23.8.2001 passed by the trial Court without any delay. Thus, there was no delay on the part of respondents No.1 and 2 to deposit the balance sale consideration in compliance of decree dated 23.8.2001 which finally merged in decree dated 13.12.2010 passed by this Court in regular second appeal. Otherwise also, the Court has got discretionary power under Section 28 of Specific Relief

Act to condone the delay seeking permission to deposit the balance sale consideration and the time can be extended even in the absence of any application filed by the decree holder as has been held by this Court in **Shree Chand through LRs v. Jabal Singh @ Jawahar Singh 2020 (1) RCR (Civil) 305.**

13. In light of the aforesaid factual matrix and the settled position of law, the executing Court rightly dismissed the objection petition filed by the petitioner and his brother vide order Annexure P-7 whereby prayer for rescission of agreement to sell dated 21.2.1989 was declined.

14. For the foregoing reasons, this Court does not find any ground to interfere. Resultantly, the present petition is hereby dismissed. Interim order dated 18.3.2020 stands vacated.

( KARAMJIT SINGH )  
JUDGE

November 23, 2023  
Paritosh Kumar

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |