

In the High Court of Punjab and Haryana, at Chandigarh

Execution Second Appeal No. 15 of 2023 (O&M)

Reserved On: 07.12.2023
Pronounced On: 11.12.2023

Harbhajan Singh

... Appellant(s)

Versus

Ajit Singh (Now Deceased) through his Legal Representatives and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
with Mr. Mandeep Singla, Advocate
for the appellant(s).

Mr. Rakesh Chopra, Advocate
for the respondent.

Anil Kshetarpal, J.

1. This execution second appeal has been filed by Harbhajan Singh, who claims to be the third party objector. The objection petition filed by him before the Executing Court has been dismissed, which, in appeal, has been affirmed by the First Appellate Court. The correctness of the aforesaid orders passed by the Executing Court and the First Appellate Court, is assailed in this appeal.

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

3. Jagtar Singh (respondent No.2) was the owner of the property.

He entered into an agreement to sell on 04.12.2000 in the favour of Ajit

Singh, however, he failed to fulfill his promise due to which Ajit Singh filed

a suit for possession by way of specific performance of the agreement to sell on 01.08.2002. The suit was decreed on 25.07.2012. The correctness of the aforesaid judgment was affirmed by the First Appellate Court on 09.10.2014. The second appeal filed by Jagtar Singh was also dismissed on 08.09.2015.

4. During the pendency of the first appeal, Harbhajan Singh, the appellant, filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) on 17.07.2013, which was dismissed.

5. At present, the decree holder, namely Ajit Singh has died and his legal heirs filed the execution petition in which the sale deed has also been registered on 28.07.2020 and the symbolic possession of the property has been delivered to them. The execution petition has been disposed of as specified.

6. Harbhajan Singh, the appellant, filed an objection petition claiming that Jagtar Singh had executed two registered sale deeds in his favour on 02.12.2005 and 27.09.2011, respectively. It is also his case that in fact Jagtar Singh entered into an agreement to sell in his favour on 10.11.1999.

7. It would be noted here that the sale deeds dated 02.12.2005 and 27.09.2011, respectively, are in favour of Harbhajan Singh and Amarjit Singh. In the given factual matrix the legal heirs of late Sh.Amarjit Singh filed a separate suit challenging the judgment and decree passed on 25.07.2012. It was also prayed that the plaintiff should be declared the owner of the property. The aforesaid suit was dismissed on 07.11.2020

which, in appeal, has been affirmed by the First Appellate Court on

25.04.2022.

8. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

9. The learned senior counsel representing the appellant submits that the two sale deeds which were executed in the favour of Harbhajan Singh and Amarjit Singh on 02.12.2005 and 27.09.2011 have never been set aside. He further submits that the agreement to sell dated 10.11.1999 in favour of Harbhajan Singh, appellant, was executed prior to the agreement to sell dated 04.12.2000 in favour of Ajit Singh. Hence, the appellant has a prior right.

10. On the other hand, the learned counsel representing the respondent submits that Harbhajan Singh, while filing an application under Order I Rule 10 CPC, never disclosed the alleged agreement to sell dated 10.11.1999. He submits that the aforesaid agreement to sell has been fabricated only to frustrate the decree in favour of Ajit Singh.

11. This Court has considered the submissions of the learned counsel representing the parties. It is evident that Harbhajan Singh filed an application under Order I Rule 10 CPC before the First Appellate Court, the alleged agreement to sell dated 10.11.1999 was neither pleaded nor attached with the application. Moreover, as per the judgment passed in the suit filed by the legal heirs of Amarjit Singh, it has come on record that as per the agreement to sell dated 10.11.1999 the sale deed was to be executed on 05.06.2000. The appellant has produced an agreement for extension of the time executed on the back side of the agreement to sell dated 10.11.1999. It is evident that the aforesaid supplementary agreement has rightly been

Execution Second Appeal No. 15 of 2023 (O&M)

ignored by both the Courts below. It has been found on appreciation of evidence that in fact Harbhajan Singh and Jagtar Singh colluded together. It has also been held that the agreement to sell dated 10.11.1999 has been fabricated in order to frustrate the decree in favour of Ajit Singh. The learned senior counsel representing the appellant failed to point out any substantive error in appreciation of evidence by both the Courts below.

12. The sale deeds dated 02.12.2005 and 27.09.2011 are governed by the rule of *lis pendens* because the Ajit Singh’s suit filed on 01.08.2002 was pending when both the sale deeds were executed. Hence, they are governed by the rule of *lis pendens*. Moreover, a separate suit filed by the heirs of Amarjit Singh has already been dismissed. In the aforesaid suit, the correctness of the judgment and decree dated 25.07.2012 in favour of Ajit Singh has been upheld.

13. Keeping in view the aforesaid discussion, finding no merit, the present appeal is dismissed.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 11, 2023
“DK”

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