

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-3637-CII-2023 in/&
CR-5233-2019
Date of Decision :27.02.2023

Vijay Laxmi

...Petitioner

Versus

Shubh Kumar (now deceased) through LRs
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Abhimanyu Kalsy, Advocate for the petitioner.

Mr. Ayush Gupta, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

CM-3637-CII-2023

Present application has been filed for recalling the order dated 20.02.2023 passed by this Court by which, the main revision petition as well as CM-15123-CII-2022 was dismissed for non-prosecution.

Keeping in view the averments made in the present application, which are duly supported by an affidavit, the application is allowed. Order dated 20.02.2023 passed by this Court is recalled and the main revision petition as well as civil miscellaneous application is ordered to be restored to its original number and is taken up for hearing today itself.

CR-5233-2019

In the present revision petition, challenge is to order dated 21.05.2019 (Annexure P/4), which has been passed in execution of the

judgment and decree of the trial Court dated 13.01.2010, which has already attained finality up to the Hon'ble Supreme Court of India. The petitioner is the one, who had purchased the property in question not only during the pendency of the civil suit filed in which decree dated 13.01.2010 was passed but is also the beneficiary of a sale deed despite the fact that the original owner of the property was restrained from alienating the property in question. Not only this, petitioner herein was party to the litigation even up to the Hon'ble Supreme Court of India but the said litigation has remained unsuccessful qua the claim of the decree holder.

The argument which is being raised by the learned counsel for the petitioner is that once there was no direction by the Court below for handing over the possession of the property in question, the direction by the Executing Court to the petitioner, who is a subsequent purchasee, having purchased the property in question during the pendency of the litigation property, cannot be directed to hand over the possession of the property in question to the respondent/decreed holder even if, the said property was sold to the petitioner in contravention of an interim order of the competent Court of law.

Learned counsel for the respondent-decreed holder submits that the objections are being filed by the petitioner only to retain the property in question though, the said property was purchased by the petitioner during the pendency of the suit filed by the decree holder, keeping in view the *lis pendens*, no benefit of the said sale can be given to the petitioner-objector especially, when the sale was effected in contravention of an order passed by a competent Court of law.

Further, learned counsel for the respondent-decree holder submits that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in *Civil Appeal No.2726-2022* titled as *Manickam @ Thandapani and another vs. Vasantha* decided on 05.04.2022, the relief of possession is inherited in the suit for specific performance.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The civil suit was filed by the decree holder seeking specific performance in the year 1993 whereas, the property in question was purchased by the petitioner in the year 1997. Further, it has already come on record in the judgment and decree of the Lower Appellate Court dated 07.12.2016 that defendant No.3 i.e. original owner was restrained from alienating the property in question but the said property was still sold in favour of the defendants No.4 and 5 ignoring the said restriction imposed by the competent Court of law and the petitioner herein was defendant No.5 before the Lower Appellate Court. This shows as to what modus operandi was being maintained to oust the claim of the decree holder even during the pendency of the litigation before the judgment and decree of the trial Court dated 13.01.2010 attained finality up to the Hon'ble Supreme Court of India. It is a conceded position before this Court that after the judgment of the first Appellate Court, where the petitioner remained unsuccessful, he never availed further remedy before this Court and the judgment and decree of the Civil Court qua the specific performance became final in the hands of respondent/decree holder.

Under these circumstances, this Court has to analyze whether impugned order passed by the Executing Court dated 21.05.2019 needs interference by this Court or not.

By the impugned order, the Executing Court while executing the judgment and decree of the trial Court dated 13.01.2010 had directed the petitioner-defendant No.5 to hand over the possession of the property in question for which not only proceedings had already attained finality but the decree holder has already been recorded as owner of the said property in question in execution of the said decree dated 13.01.2010. The only objection of the petitioner is that once there is no direction to hand over the possession of the property in question to the decree holder, the executing Court has gone beyond its jurisdiction to pass an impugned order directing the petitioner to hand over the possession of the property in question to the decree holder.

Said argument needs to be considered keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Manickam Thandapani (supra)** wherein, the Hon'ble Supreme Court of India considered the same question of law whether the grant of possession in pursuance to the decree of specific performance inherited in the decree or not. Relevant paragraphs of the judgment are as under:-

“25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the

Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

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x x x x x x

29. To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute. Keeping in view the scheme of the statute, we find that Section 22(2) of the Act is only directory and thus, the decree-holder cannot be non suited for the reason that such relief was not granted in the decree for specific relief.

30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression "at any stage of proceeding" is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in Babu Lal has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor."

Keeping in view the said settled position of law, it can be safely said that order passed by the Executing Court is within four corners of the settled principle of law and needs no interference by this Court.

Further, there is no equity otherwise with the petitioner as it has already come on record that petitioner is beneficiary of the sale despite there being restriction upon the original owner not to alienate the property in question. Once, the said finding has already been recorded by the competent Court of law raising the objection that the petitioner had got the possession of the property in question in pursuance to sale which was prohibited by the

operation of interim order against the original owner, no benefit of the said sale can even otherwise be extended to the petitioner so as to retain the possession over the property in question especially, when there is a decree in favour of the decree holder hence, merely that petitioner had got possession of the property in question in his favour contrary to the interim order passed by the competent Court of law hence, the decree in favour of the decree holder qua the property in question will also bind the petitioner, who was not only the party to the decree but also got the possession of the said property in question contrary to the direction given by the competent Court of law.

Keeping in view the above, no ground for interference by this Court is made out and the revision petition is accordingly dismissed.

February 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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