

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

119

CR-5451-2023 (O&M)
Date of Decision : 12.10.2023

Charanjeet KaurPetitioner

Versus

Navneet Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Savita Rana, Advocate for the petitioner.

NAMIT KUMAR, J. (ORAL)

CM-18199-CII-2023

Prayer in the instant application filed under Section 151 of CPC is for permission to place on record certified copy of order dated 31.07.2018 passed by learned Rent Controller, Dera Bassi.

Allowed as prayed for subject to all just exceptions.

CR-5451-2023

1. The instant revision petition has been preferred by the petitioner impugning the order dated 31.05.2023 passed by learned Additional Civil Judge (Senior Division), Dera Bassi, District SAS Nagar (Mohali) whereby third party objections filed by the petitioner in execution petition bearing No.EXE-253-2018 has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that respondents No.1-Navneet Kaur has filed the eviction petition bearing RP No.12 of 2017 against respondent No.3-Harbhajan Singh alleging that she is the owner and

landlord of house constructed overneath the land measuring 33.33 sq. yards situated in Village Lohgarh, Tehsil Derabassi, District SAS Nagar (Mohali). Respondent No.3 is tenant in the said house since 14.09.2016 @ Rs.7,000/- per month vide rent agreement dated 14.09.2016. Since October 2016, respondent No.3 has not paid the rent of the house in question, therefore, she filed the eviction petition on the ground of non-payment of rent and bona fide necessity. The said eviction petition was allowed vide ex-parte judgment and decree dated 31.07.2018 passed by learned Rent Controller, Dera Bassi. Respondents No.1 has also filed execution application before the Executing Court in which third party objections have been filed by the petitioner alleging that she has not been arrayed as necessary party in the rent petition filed respondent No.1/DH as earlier the petitioner is in possession of the residential structure standing over the total 100 sq. yards of land. The respondent No.1/DH has lured the petitioner by saying that if the petitioner will do registry of land measuring 33 sq. yards and 17 sq. yards in her favour, then she will not charge any amount of construction of ground floor on the said plot after reconstruction and on good faith, the petitioner did registry of land measuring 33 sq. yards and 17 sq. yards in favor of respondent No.1/DH but neither she has built any construction nor gave any payment to the petitioner regarding said plots. Respondent No.1/DH has also lured the petitioner that if she will execute the sale deed of remaining land measuring 50 sq. yards in the name of respondent No.1/DH then she will pay the whole amount to the petitioner and as such on good faith, the petitioner also made agreement to sell with

respondent No.1/DH but she did not make any payment to the petitioner till date rather she filed fake rent petition to grab the join property of the petitioner. Only the land measuring 33.33 sq. yards (not the residential structure standing overneath) as a share out of 100 sq. yards of land was sold by the petitioner to respondent No.1/DH and the residential structure is standing on the total land measuring 100 sq. yards which has not been got partitioned by the petitioner and the decree holder till date. Respondent No.1/DH has created false rent agreement with respondent No.3 so that she could easily get possession of the above said plot. The third party objections filed by the petitioner has been dismissed by learned Additional Civil Judge (Senior Division), Dera Bassi vide impugned order dated 31.05.2023. The relevant paras of the said order reads as under:-

“8. The sale deed of 33 sq. yards qua which the rent petition was filed against Harbhajan Singh has been produced on record by the decree holder and as per the same the possession has been delivered by the applicant/objector Charanjit Kaur only to decree holder bearing sides North : house; South : House of seller (Charanjit Kaur); East : Road, West : seller herself, along with dimensions of plot as 10' x 30' equal to 33.33 sq yards. The said sale deed clearly shows the possession of specific portion being delivered to the decree holder by sole owner i.e. objector/applicant.

9. On that note, the contentions raised by the applicant Charanjit Kaur that the land has not been partitioned does not stand good as she was the only owner of the property and had given part of her property by specific dimensions to the decree holder through sale deed dated 25.03.2015 for which decree holder filed rent petition against Harbhajan Singh.

10. As far as allegations of applicant/objector that no sale consideration was received by her from decree holder

qua sale deeds of land measuring 33 sq. yards and 17 sq. yards is concerned, the same is yet to be proved by applicant/objector in the separate suit filed by her. The sale deed in favour of decree holder cannot be declared null and void in present execution of rent petition order dated 31.07.2018. With the sale deed in favour of decree holder, applicant / objector gave her right of possession of specific portion.

11. Interestingly, despite allegations of objector qua non-payment of consideration amount by decree holder, objector has executed agreement to sell of remaining 50 sq. yards of land as well in favour of decree holder. Had decree holder been dishonest in paying consideration amount, further agreement to sell would not have been executed. Instead, it has been asserted by decree holder that she is still willing to get the sale deed of the remaining 50 sq. yards land executed in his favour by paying balance amount of Rs.24,00,000/- to applicant for which suit for specific performance has been filed by her against Charanjit Kaur and stay qua the alienation has been granted in her favour. The stay order dated 27.03.2002 passed in the said suit in favour of decree holder has also been produced on record. The same shows the mala fide on the part of applicant to the effect that she has not come to the Court with clean hands and is trying to mislead the Court by false assertions. Even otherwise, admittedly as judgment debtor and applicant/objector are brother-in-law and sister-in-law, respectively, the possibility of their conniving with each other to defeat rights of decree holder cannot be ruled out.

12. Apparently, in view of the sale deed produced on record by the decree holder, it is evident that applicant had herself had sold her 33 sq. yards of land by specifying the dimensions and boundaries in the sale deed to the decree holder, she cannot assert that she is entitled to possession of the whole of the land. Clearly, the applicant cannot take the benefit of her own wrong and keep the decree holder into abeyance even after being the original owner of the property. The decree holder has been litigating the present case since 05.04.2017, when he filed the suit seeking eviction of JD, relative of present applicant Charanjit Kaur, but despite service none appeared on behalf of the

JD and ex parte order dated 31.07.2018 was in favour of decree holder. Even, the present execution has been filed by the decree holder under due process of law to get the possession back from JD, in whose favour, rent note has been executed. The said rent note has gone unchallenged till date and despite the allegations of forgery leveled by JD and present applicant Charanjit Kaur qua the rent note and sale deed of 33 sq. yards land, no criminal action till date has been taken. Also, distinct stands have been taken by the applicant/objector in the suit filed by her to get the sale deed cancelled and the present execution. In such a situation, it is the decree holder only who is running from pillar to post to get possession of the property in which he invested his hard earned money.

13. On that note, therefore, the allegations leveled by the applicant Charanjit Kaur qua the decree holder are vague, ambiguous and devoid of merits, for which no relief can be granted to her. The decree holder is certainly entitled to get the eviction order executed as the same was passed in her favour as per the sale deed executed in her favour by applicant/objector. As such, third party objections filed by applicant Charanjit Kaur stand dismissed.”

3. Aggrieved against the impugned order dated 31.05.2023, the petitioner has preferred the instant revision petition.

4. Learned counsel for the petitioner has contended that the petitioner has not been impleaded as a party in the rent petition and the execution application and the orders have been deliberately procured by respondents No.1/DH in the absence of the petitioner. Out of total 100 sq. yards of land, the petitioner has sold only 33.33 sq. yards and 17 sq. yards (not the residential structure standing overneath) in two deals to respondent No.1/DH and residential structure is standing on total 100 sq. yards which has not been got partitioned by the petitioner and respondent No.1/DHs till date. No sale consideration has been paid by

respondent No.1 to the petitioner qua sale deeds of land measuring 33 sq. yards and 17 sq. yards. In the rent petition, respondent No.1 has not disclosed before the Court that the said residential structure is standing on total 100 sq. yards of land and not on 33.33 sq. yards of land and it has also not been disclosed that the said land and the residential structure standing there upon has not been got partitioned by the parties. The Executing Court has dismissed the third party objections filed by the petitioner without appreciating the evidence on record and also without considering the facts and circumstances of the present case. Therefore, the present revision petition may be allowed and impugned order dated 31.05.2023 may be set aside.

5. I have heard learned counsel for the petitioner and perused the relevant documents.

6. Admittedly, as per sale deed dated 25.03.2015 the petitioner had herself sold her 33 sq. yards of land by specifying the dimensions and boundaries in the sale deed to respondent No.1 quo which the rent petition was filed by respondent No.1 against respondent No.3. Therefore, the submissions made by learned counsel for the petitioner that the land has not been partitioned has rightly been rejected by the Executing Court.

7. So far as the submission made by learned counsel for the petitioner that no sale consideration qua the land measuring 33 sq. yards and 17 sq. yards has been received by her is concerned, the petitioner herself admitted in her objections that she has executed agreement to sale of remaining 50 sq. yards of land as well in favour of respondent

No.1. If she did not receive the earlier sale consideration qua the land measuring 33 sq yards and 17 sq. yards then how she got ready to execute agreement to sale of remaining 50 sq. yards in favour of respondent No.1. Moreover, the petitioner has also filed Civil Suit No.470 of 2022 for declaration regarding sale deed of land measuring 33 sq. yards and 17 sq. yards against respondent No.1 which is still pending before the Civil Court.

8. Furthermore, the petitioner is the sister-in-law of respondent No.3-Harbhajan Singh. Respondent No.1 filed the eviction petition on 05.04.2017 but despite service none appeared on behalf of respondent No.3 and exparte order dated 31.07.2018 was passed by learned Rent Controller, Dera Bassi in favour of respondent No.1. After a lapse of more than 05 years, respondent No.3 has not complied with order dated 31.07.2018. It appears that the petitioner has filed third party objections in connivance with respondent No.3 (her brother-in-law) with the sole intent to abuse the process of law and just to delay the process of warrants of possession against the judgment debtor/respondent No.3.

9. The impugned order dated 31.05.2023 passed by learned Additional Civil Judge (Senior Division), Dera Bassi is quite detailed and well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

CR-5451-2023 (O&M)

8

10. The petitioner has also filed application bearing No.17084-C-II-2023 for condonation of delay of 98 days in filing the present revision petition. Perusal of application shows that no specific explanation has been given for delay of 98 days in filing the revision petition.

11. In view of above, the application bearing No.17084-C-II-2023 for condonation of delay as well as the revision petition stand dismissed.

12.10.2023

Kothiyal

(NAMIT KUMAR)

JUDGE

Whether Speaking/reasoned

Whether Reportable

Yes/No

Yes/No