

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

123

CR-3563-2023 (O&M)
Date of Decision: 17.07.2023

HARJINDER KAUR

..PETITIONER

Versus

BHARPUR SINGH AND ANR

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. H. R. Bhardwaj, Advocate for
Mr. J.S. Brar, Advocate for the petitioner.

VIKRAM AGGARWAL, J.(Oral)

CM-10670-CII-2023

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

Exemption from filing certified copies of Annexures P-1 to P-4 and exemption from filing true typed copies of Annexures P-3, P-4 and P-5 is granted.

Main case

1. The present revision petition filed under Article 227 of the Constitution of India assails the order dated 23.04.2019 (Annexure P-5) passed by the Court of Additional Civil Judge (Senior Division), Gidderbaha vide which the application filed by the present petitioner (defendant No.2 in the civil suit) under Section 152 of the Code of Civil Procedure, 1908 (hereinafter referred to 'CPC') for correction of judgment and decree dated 25.11.2014 was dismissed.

2. Briefly summarised, the facts of the case are that respondent No.1-plaintiff Bharpur Singh filed a suit for possession by way of specific performance of the agreement to sell dated 12.06.2009 in respect of land

measuring 6 Kanals and 11 Marlas (fully prescribed in the plaint) situated in Village Bhallaiana, Tehsil Gidderbaha, District Sri Muktsar Sahib. In the alternative, a decree for recovery of Rs.6,35,000/- as earnest money was prayed for. A declaration was also sought that the transfer deed dated 26.05.2010 executed by respondent/defendant Harbans Singh in favour of the present petitioner Harjinder Kaur was illegal, null and void. Permanent injunction restraining the defendants from alienating the suit land was also sought. This suit was decreed by way of judgment and decree dated 25.11.2014 (Annexures P-1 and P-2 respectively). The respondent No.1-plaintiff Bharpur Singh was held entitled to recover Rs.6,35,000/- having been paid as earnest money.

An application was moved by the present petitioner under Section 152 CPC for amendment of the judgment and decree dated 25.11.2014 stating that in the judgment and decree, recovery of Rs.6,35,000/- had inadvertently been ordered from both defendants whereas the specific claim of the plaintiff-respondent Bharpur Singh was that the earnest money had been paid to respondent-defendant No.1 Harbans Singh and, therefore, recovery if any could have been made from him only and not from the present petitioner who was defendant No.2 in the suit. This application came to be dismissed vide impugned order dated 23.04.2019 (Annexure P-5) leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner and have perused the paperbook.

4. Learned counsel for the petitioner has strenuously urged that the trial Court gravely erred in dismissing the application filed by the present petitioner. Attention of the Court was drawn to the contents of

the judgment dated 25.11.2014 to point out that it had specifically been pleaded by respondent No.1-plaintiff that the earnest money had been paid to the defendant No.1 Harbans Singh. It has been submitted that even issue No.2 was with regard to the recovery of Rs.6,35,000/- from defendant No.1 and nowhere, defendant No.2 was mentioned. It has been contended that even in Para 11 of the judgment it was observed by the trial Court that payment of Rs. 6,35,000/- to defendants No.1 duly stood proved. It has been contended that, however, inadvertently in the relief clause, it was mentioned that the respondent No.1-plaintiff would be entitled to recover Rs.6,35,000/- from the defendants instead of mentioning that it would be recoverable from defendant No.1. Learned counsel has submitted that under the circumstances, the trial Court erred in dismissing the application filed by the present petitioner.

5. I have given my thoughtful consideration to the arguments addressed by learned counsel for the petitioner but find the same to be devoid of merit.

6. Before advertng to the merits of the case, it would be essential to mention that the suit was filed by respondent No.1-Bharpur Singh against respondent No.2-Harbans Singh and the present petitioner Harjinder Kaur, who is none other than the wife of Harbans Singh. The suit property had been transferred by Harbans Singh to Harjinder Kaur.

7. Be that as it may, the suit filed by respondent No.1-plaintiff-Bharpur Singh was decreed to the extent that he was entitled to recover Rs.6,35,000/- from the defendants. An appeal is stated to have been filed by Harbans Singh against the said judgment and decree, but the same is stated to have been dismissed. Still further, the present petitioner is stated to have filed objections in an execution petition filed by the respondent

No.1-plaintiff wherein the same ground was taken in the application under Section 152 CPC. These objections are stated to have been dismissed on 06.10.2018 and it was duly held that both the judgment debtors would be liable for the payment of the decretal amount. Strangely enough, the petitioner has held back all the aforesaid documents from this Court and has not annexed them with the present petition. The aforementioned facts have been noticed in the impugned order and have been admitted during the course of arguments. It appears that at the same time, the petitioner had also moved an application under Section 152 CPC which was also dismissed by the trial Court on 23.04.2019 mentioning the aforesaid facts. The trial Court also rightly held that the mention of word 'defendants' in the judgment and decree dated 25.11.2014 could not be said to be a clerical mistake and the remedy, if available with the present petitioner was to file an appeal against the judgment and decree dated 25.11.2017 instead of filing of application under Section 152 CPC for correction. I do not find any infirmity muchless illegality in the order passed by the trial Court warranting interference by this Court.

8. In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

17.07.2023
pry

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No