

CR-7254-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7254-2019 (O&M)

Date of decision: May 16, 2023

Balwinder Singh

....Revisionist

versus

Santosh Kumari and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Parvinder Singh, Advocate for the revisionist.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 20.07.2019(Annexure P-12) passed by learned Additional Civil Judge (Junior Division), Garhshankar whereby execution application filed by petitioner/ decree holder, was dismissed.

2. The revision petition is premised on the averments that petitioner/ plaintiff filed suit for specific performance against respondents No.1 to 3 along with another defendant, namely, Gurjit Kumar/pro forma respondent No.4. The said suit was partly decreed *ex parte* by learned trial Court vide judgment/ decree dated 31.08.2015 (Annexure P-1).

2.1. Plaintiff was held entitled for alternative relief of recovery of Rs.35.00 lakh from defendants No.1 to 3. Petitioner filed execution application. He submitted list of properties before the Executing Court. Petitioner filed an application to participate in auction and the same was allowed on 10.07.2017. At the time of auction, it transpired that share of judgment debtor No.3 was already under attachment. Learned Executing Court summoned the file of other execution petition in which his share was attached.

2.2. Learned Executing Court ordered that share of Judgment Debtor No.3 could not be sold again as Avtar Singh had become owner of his share and refused to

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confirm the sale of property involved in said decree. No decision was taken *qua* sale of shares of Judgment Debtors No.1 and 2. Decree holder was directed to submit fresh list of property. Ultimately, vide order dated 20.07.2019, learned Executing Court dismissed the execution petition filed by decree holder.

3. Despite attempts, respondents could not be served and it transpires that they were proceeded *ex parte* even before learned Executing Court below as similar was the fate of futile attempts of causing service on them including steps taken by way of publication. In the premise, their representation before this Court is exempted. In any case, nature of order being passed shall not prejudice them in any manner.

4. I have heard learned counsel for the petitioner and perused the case file.

5. In course of arguments, learned counsel submits that learned Executing Court was right in opining that property of judgment-debtor/respondent No.3, which formed part of an earlier decree cannot be given to decree-holder in execution of his decree, but he points out that properties owned by respondents No.1 and 2, who are also judgment-debtors do not form part of earlier decree and there is no legal impediment against the same being given to decree-holder in execution of the decree. The suggestion seems to be fair and I am in agreement with the same.

6. In the premise, impugned order dated 20.07.2019 (Annexure P-12) is modified and the petitioner's execution application is restored with liberty to petitioner to seek execution of decree against respondent No.1 and 2/ judgment debtors. Needless to say, learned Executing Court shall proceed in accordance with law.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 16, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No