

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

149

ESA-3-2024 (O&M)
Date of Order:09.02.2024

Randhir Jain**.Appellant****Versus****Sai Traders and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Harsh Aggarwal, Advocate
for the appellant.**

**Mr. Manu Loona, Advocate
for respondent nos.1 and 2.**

**Mr. Shrey Goel, Advocate
for respondent no.3.**

**Mr. Sarju Puri, Advocate
for respondent no.5.**

ANIL KSHETARPAL, J

1. In this Execution Second Appeal, a third party objector assails the correctness of the order passed by the Executing Court on 18.09.2023, while dismissing his objection petition which in appeal has been affirmed by the First Appellate Court. The appellant claims interest in the property on the basis of an oral agreement to sell. It may be noted here that the appellant claims to be in possession of Industrial Site No.C-46, which is owned by Sh. Deepak Kapoor son of Sh. A.L.Kapoor, Judgement Debtor No.2. It is also significant to mention here that Industrial Site No.C-46 has already been auctioned in favour of the highest bidder during the pendency of the first appeal filed by the appellant.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

3. On one hand, the learned counsel representing the appellant contends that the agreement to sell in favour of the appellant is proved from the affidavit Annexure A-9, sworn in by Sh. Deepak Kapoor on 17.05.2017, acknowledging the entire payment. He further submits that on 27.06.2017, the Punjab States Industries and Export Corporation Limited granted permission to Sh. Deepak Kapoor to transfer the property in favour of the appellant. Hence, the appellant has interest in the property which may not be sold particularly when the judgment debtor is owner of various properties including the Industrial Site No.C-47, D-24, D-25 and D-26. He further submits that the Executing Court has erred in auctioning the property which is in possession of the appellant while ignoring the other properties which are in possession of the judgment debtor.

4. On the other hand, the learned counsel representing the respondents including the Judgment Debtors, the decree holders as well as the auction purchaser contend that on 27.06.2017, only a conditional permission to transfer the property was granted while directing the appellant to produce the registered sale deed within a period of six months from the date of issuance of this letter. He submits that the appellant has never filed any suit for specific performance of the agreement to sell despite repeated communications by the Punjab States Industries and Export Corporation Limited. It is further submitted that on 20.08.2015, Industrial Plot No.C-46 was attached and there is no document to prove that there was any transaction between the Judgment Debtor No.2 and the appellant before that date. It has further been brought to the notice of the Court that subsequently the appellant became partner with Judgment Debtor No.2, however, these plots always remained as the properties of the Judgment Debtor No.2 and his

family members and it was never the property of the partnership firm.

5. It has also been brought to the notice of the Court that the decree holder vide notice dated 08.05.2015, informed the appellant that the proceedings for attachment of the property are underway and he should desist from entering into transactions with the Judgment Debtor.

6. This court has considered the submissions of the learned counsel representing the parties.

7. In this case, a suit for recovery was filed by the decree holder against the Judgment Debtor. During the pendency of the suit, vide order dated 20.08.2015, Industrial Site Nos.C-46 and C-47 were attached. There is no material to prove that there was any transaction between the appellant and Judgment Debtor No.2- Sh. Deepak Kapoor. Admittedly, the appellant has never sought the specific performance of the agreement to sell. A period of nearly 7 years have elapsed from the date the Punjab States Industries and Export Corporation Limited granted permission which was valid only for a period of six months. After a passage of six months, the permission lapsed. The Punjab States Industries and Export Corporation Limited has repeatedly issued notice to the appellant to comply with the terms. The learned counsel representing the respondent (Judgment Debtor No.2) has explained that affidavit dated 17.05.2017 was submitted on a prescribed performa and the appellant never paid the entire sale consideration as would be evident from various communications between the parties.

8. In view of the aforesaid discussion, it is evident that the appellant is not even entitled to claim protection under Section 53-A of the Transfer of Property Act, 1882, because there is no written agreement to sell between the parties.

9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
10. Dismissed.
11. All the pending miscellaneous applications, if any, are also disposed of.

February 09, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: YES/NO

Whether reportable: YES/NO