



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3327-2015 (O&M)
Reserved on:-25.09.2024
Pronounced on: 01.10.2024

RAKBIR KAUR

.... PETITIONER

Vs.

WORKING WOMEN RURAL WELFARE SOCIETY

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. K.S. Brar, Advocate, for the petitioner.

Mr. V.K. Jindal, Sr. Advocate, with
Mr. Akshay Jindal and Mr. Pankaj Gautam, Advocates,
for the respondent.

DEEPAK GUPTA, J.

Petitioner is aggrieved by the order dated 07.02.2015 (*Annexure P8*), whereby execution application (*Annexure P5*) filed by her against the judgment-debtor/respondent has been dismissed by the Court of Id. Civil Judge (Jr. Division), Kharar.

2. Perusal of the paper book would reveal that based upon a compromise dated 06.03.1998 (*Annexure P1*), decree dated 09.11.1998 (*Annexure P4*) was passed in Civil Suit No.10 of 1997 by Id. Civil Judge (Jr. Division) Kharar in favour of the petitioner. The compromise was effected between petitioner-Rakbir Kaur and the respondent-Working Women Rural Welfare Society [for short '*the Society*']. The decree-holder-Rakbir Kaur filed Execution (*Annexure P5*), in which objections (*Annexure P6*) were filed by the Judgment-debtor i.e. the Society. Accepting the objections, the execution was dismissed by the Executing Court by way of the impugned order dated 07.02.2015, which has been assailed before this Court.

3.1 As per the compromise (*Annexure P1*) total land measuring 14 kanal 8 marla stood in the name of the Society. The Society has carved out of

plots over the said land as per the plan annexed with the compromise, forming part of the same. As per Clause No.2 of the compromise, the society had already allotted four plots i.e. plots No.1 to 4 with possession in the following manner: -

Sr. No.	Name	Plot N:	Area	Allotment date
1	Mrs. Jasbir Dhillon w/o S.S. Dhillon	1	1K	04.3.1998
2	Mrs. Jasbir Dhillon w/o S.S. Dhillon	2	1K	04.3.1998
3	Mrs. Rakbir Kaur w/o Rajeev Mittal	3	1K	04.3.1998
4	Master Pari Mittal s/o Rajeev Mittal	4	1K	04.3.1998

3.2 Clause No.3 of the compromise provided that society agreed to allot 3 plots to the following persons: -

Sr. No.	Name	Plot N:	Area	Allotment date
1	Raj Mohinder singh s/o Sh. Baghel Singh	5	1K	31.08.1998
2	Mr. S.S. Dhillon s/o Sh. Anokh Singh	6	1K	31.08.1998
3	Mr. S.S. Dhillon s/o Sh. Anokh Singh	22 or 23	1K	31.08.1998

3.3 Clause 4 of the compromise provided that society had to allot 12 plots to different persons as per the following details: -

Sr. No.	Name	Plot area to be allotted	Allotment date
1.	Mrs. Veerinder Kaur s/o Sh. G.S. Sidhu	1 K	31.08.1998
2.	Mr. Sharanjit Singh s/o Joginder Singh	1 K	30.11.1998
3.	Mrs. Naranjan Kaur w/o S. Chanchal Singh	10 M	“
4.	Mr. Sharanjit Singh s/o Joginder Singh	10 M	“
5.	Mr. K.D. Verma, s/o D.N. Verma, r/o	10 M	“
6.	Mrs. Sudesh Verma w/o Mr.K.D. Verma	5M	31.12.1998
7.	Ms. Surinder Kaur, w/o S. Balkar Singh	5M	“
8.	Mr. Ranjit Singh Mangat	5M	31.03.1999
9.	Mr. Charanjit Singh Grewal	5M	“

10.	Mr. Surjit Singh	10M	30.06.1999
11.	Mrs. Neelam Geol, w/o Mr. J.B. Goel	5M	“
12.	Mr. Raman Mehra M/s Raman Medical	5M	“

3.4 Clause No.6 of the compromise further provided that the Society will allot two more plots after charging development charges @ ₹7500/- per marla with possession i.e. 1 kanal each in the name of petitioner- Rakbir Kaur and Master Pari Mittal either in the land or in the adjoining land.

3.5 Other terms and conditions are also incorporated in the compromise, which are not relevant for the purpose of present dispute.

4.1 In the execution filed on 18.11.2008 i.e. after 11 years of the compromise decree, it was claimed by the petitioner-decree holder that there was deficiency of around 200 sq. yard of land in 6 plots allotted to different persons as per Clauses No.2 & 3 of the compromise. It was further alleged by the petitioner that Society had not allotted 2 plots as per clause N: 4 of the compromise i.e. 1 plot measuring 1 kanal in the name of Sharanjit Singh and 1 plot measuring 5 marla in the name of Mrs. Neelam Goyal. Prayer was accordingly made by decree-holder/petitioner to issue a warrant so as to comply the aforesaid terms of the compromise.

4.2 The judgment-debtor-Society filed objections submitting that plots as mentioned in the compromise had already been allotted after proportionate deduction of land consuming for development of roads, water supply line and tubewell tank, parks etc.; that petitioner and others were obliged to pay ₹7500 per marla as development charges, which had not been done by them. Society further pleaded that as far as the allotment of 1 kanal plot to Sharanjit Singh and 5 marla plot to Neelam Goyal is concerned, petitioner herself had requested that instead of abovesaid two persons along with Surinder Kaur wife of Balkar Singh, 5 plots of 5 marla each be allotted to 5 other persons, which was duly done as per her asking. Prayer was accordingly made to dismiss the execution.

4.3 After considering submissions of both the sides, the execution petition was dismissed by the Court on 07.02.2015. It was observed by the executing Court that petitioner/deGREE-holder did not have any attorney in her favour from Sharanjit Singh and Neelam Goyal so as to contest the execution petition on their behalf and therefore, she did not have the right to contest the petition as it is only they, who could have filed the execution for redressal of their grievances, if any. Apart from this, Decree-holder-Rakbir Kaur had admitted her signature on the affidavit (Ex.D1), as per which it was specifically mentioned that petitioner had surrendered the plots allotted to Sharanjit Singh and Neelam Goyal and in lieu thereof, plots be allotted to other persons and that she will be fully responsible for any claim by above said Sharanjit Singh & Neelam Goel and as such, petitioner was estopped to claim the plots allotted to them. Ld. Executing Court applied the principle of estoppel in this regard and also held that petitioner could not be allowed to approbate and reprobate. Executing Court further found that no oral or documentary evidence was brought on record by the petitioner to show that there was any deficiency in the area of plots allotted to her and other five persons as per clause Nos.2 and 3 of the compromise. Neither at the time of allotment nor later on, the petitioner and others had ever objected about the lesser area and that now after 11 years, she was claiming that lesser area was allotted, which could not be believed. With all these findings, the objections filed by the JD-Society were accepted and the execution was dismissed.

5.1 Assailing the aforesaid order, it is contended by Id. Senior Advocate for the petitioner-deGREE holder that Executing Court has gone beyond the decree by relying upon affidavit (Ex.D1), which was not proved in accordance with law. Ld. senior Advocate further submits that proper procedure was not adopted by the Executing Court and that since the compromise was entered into between the decree-holder-petitioner and the Society, therefore, she was competent to file the execution on behalf of other beneficiaries also.

5.2 Ld. Senior Advocate submits further that earlier the petitioner

had approached this Court by filing Civil Revision No.5043 of 2013 for expeditious disposal of the execution, which was disposed of on 22.11.2013 by directing the respondent herein to allot all the plots as per the compromise. Copy of that order is *Annexure P11*. The Review application filed by the respondent was dismissed by this Court on 22.01.2014 as per *Annexure P12*. However, this order was impugned by the respondent before Hon'ble Supreme Court, which was disposed of vide an order dated 27.10.2014, copy of which is *Annexure P13*. It is contended that the JD-Society was bound to allot the plots to various persons as mentioned in the compromise and as per the affidavit of Amba Prashad, but this aspect has been completely ignored by the Executing Court.

5.3 It has also been pointed out that two plots of 1 kanal each, which were required to be allotted to decree holder Rakkir Kaur and Pari Mittal as per Clause 6 of the compromise, have not been allotted till date.

5.4 With all these submissions, Id. Senior Advocate prayed for setting aside the impugned order and for directing the Executing Court to get the compromise decree executed in its letter and spirit.

6. Refuting all the aforesaid contentions, Id. senior advocate for the respondent/JD submits that by taking into consideration all the aspects, the objections of the JD have been rightly accepted by the Executing Court and that impugned order has been validly and rightly passed by taking into consideration all the aspects. He prayed for dismissal of the petition.

7. I have considered submissions of both the side and have appraised the record carefully.

8. As noted earlier that in the execution petition, only two claims have been made by the decree holder – (1) regarding deficiency of around 200 sq. yards of land in the plots allotted under clauses No.2 & 3 of the compromise; and (2) non-allotment of the plots to Sharanjit Singh and Neelam Goyal, as per clause No.4 of the compromise.

9. As per Clause Nos. 2 & 3 of the compromise read together, total 7 plots were to be allotted, all of 1 kanal each. Out of them 4 plots of 1 kanal each had already been allotted prior to the compromise, whereas the 3 plots were to be allotted later. It is not in dispute that the 3 plots as per clause No.3 were duly allotted.

10. The contention of the decree-holder as per execution is that area of each plots, so allotted under clause No.2 and 3 of the compromise, was 450 sq. yards each but after measurement of all the plots as mentioned above, there is deficiency of more than 200 sq. yard of land and that JD is bound to make good the said deficiency. In this regard, the pleading itself of the decree-holder/petitioner is quite vague. Perusal of Clause Nos.2 and 3 of the compromise would reveal that all the 7 plots allotted/to be allotted are of 1 kanal each. The area of 1 kanal of plot is 450 sq. yard as per the agreed position and which is also reflected in the site plan annexed with the compromise. Even in the execution, decree-holder has mentioned that area of each of 1 kanal of plot was 450 sq. yard. The decree holder- petitioner has not specified that 200 sq. yards of area, which is alleged to be lesser, is part of any particular plot or it is the combined area of all the 7 plots. In case, it is combined area, it is not disclosed as to how much area is deficient from each or any of the plots as mentioned in para No.2 & 3 of the compromise.

11. It is very important to notice that the 4 plots as mentioned in Clause No.2 had already been allotted by the Society to the four persons prior to the compromise i.e. on 04.03.1998; whereas, the 3 plots as per Clause No.3 of the compromise were allotted on 31.08.1998 i.e. after the compromise but prior to the passing of the decree on 09.11.1998. It is not the case of the decree holder/petitioner that possession of the allotted plots as per clause 3 of the compromise was not given. Thus, the allotment and delivery of possession was complete in 1998 itself and this execution alleging deficiency of 200 sq. yards of area combined in the 7 plots is being alleged in November 2009 i.e. after 11 years of the decree.

12. Ld. Executing Court has rightly observed that except for the bald

statement of the decree holder/petitioner on the file, no other evidence has been produced by the petitioner so as to prove the alleged deficient area in any or all the plots combined together. No application was ever moved by the petitioner to get the Local Commissioner appointed in order to see the exact area of the 7 plots as mentioned in the Clause No.2 & 3 of the compromise in order to know as to whether there was any deficiency. Not only this, out of the 7 plots as mentioned in these clauses No.2 & 3 of the compromise, 6 plots are allotted to the persons other than the decree holder. None of those beneficiaries have approached this Court to allege the deficiency in the area of their allotted plots. In these circumstances, the Executing Court is right in observing that the decree holder, in the absence of any attorney in her favour, was not competent to allege the alleged deficiency of area in the allotted plots.

13. Although Id. Senior Advocate for the decree-holder/petitioner herein is right in contending that proper issues were not framed so far to prove the deficiency in the area, but at the same time, this Court observes that both the parties were well aware of the stand taken by them and therefore, the petitioner could have produced the evidence to prove her assertion. No such evidence was placed on record. In these circumstances, the first claim, as raised by the petitioner, has been rightly declined by the Executing Court.

14. Coming to the second claim made by the decree holder in the execution regarding non-allotment of plots to Sharanjit Singh and Neelam Geol as per Clause No.4 of the compromise, during her testimony, petitioner-Rakbir Kaur was confronted with an affidavit dated 24.12.2002 (*Ex./D1*). She admitted her signature thereon. Once it is so, she cannot be allowed to deny the contents thereof. It is very important to notice that in her entire execution petition, the petitioner has not disclosed about the execution of the said affidavit post entering into the compromise and post passing of the compromise decree despite the fact that said affidavit is very material for disposal of the case.

15.1 As per this affidavit (Ex.D1), petitioner had entered into agreement with the society so as to allot plots in the name of following persons: -

Sharanjit Singh	1 K and 10 M
Surinder Kaur	5M
Surjit Singh Advocate	5M
Neelam Goyal	5M

15.2 As per para No.2 of the affidavit, the deponent- petitioner/ decree-holder stated that she wanted to surrender the plots allotted in the name of above named persons and wanted that fresh allotments be made in the name of following persons: -

1. Shalini Sidana
2. Madhu Grover
3. Vijay Mahajan
4. Mrs. Kumkum Shrivastava
5. Mrs. Suman Grover

15.3 As per affidavit, the society had issued the allotment letters to new purchasers named in para No. 2. The deponent further undertook that in case any person named in para No.1 i.e. the previous purchases will raise claim over the plots, then she will be fully responsible for the same.

16. The judgment debtor/Society placed on record the evidence in the form of allotment letters Ex.D33 to Ex.D37, revealing that allotment was made in the name of five persons as mentioned in para No.2 of the affidavit (Ex.D2) as desired by the decree-holder. After executing the affidavit (Ex.D1), the petitioner cannot be allowed to approbate and reprobate. She is further estopped so as to make any claim regarding non allotment of plots in favour of Sharanjit Singh and Smt. Neelam Goyal.

17. Besides, it is important to notice that neither Sharanjit Singh nor Smt. Neelam Goyal, who are alleged to have not have been allotted the plots as per the compromise of 1998, have approached the Court alleging non-allotment of plots to them.

18. As such, this claim No.2, as made by the petitioner in the execution, has also been rightly rejected by the Executing Court.

19. Ld. Sr. Advocate for the petitioner-decree holder also contends that the Society was bound to allot two plots i.e. 1 kanal each as per clause No.6 of the compromise in favour of petitioner and Pari Mittal. However, as has been rightly pointed out by Id. senior Advocate for the respondent-JD-Society that no such claim whatsoever was made by the decree holder in the execution, which has filed in 2009 and that the executing court was not in seisin of the matter regarding the non-allotment of the plots as per clause No.6 of the compromise.

20. This Court agrees with the abovesaid contention of counsel for the respondent, as there was no allegation on the part of the decree holder regarding the non-allotment of plots as per Clause No.6 of the compromise.

21. In view of the entire discussion as above, this Court does not find any merit in the present petition. There is no reason to interfere in the well reasoned order passed by the Executing Court. Holding the present petition to be devoid of any merit, the same is hereby dismissed.

01.10.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No