

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-4455-2018 (O&M)****Reserved on:-28.08.2024****Pronounced on: 31.08.2024****JAGJIT SINGH**

. . . . PETITIONER

Vs.**GURMEL SINGH**

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate, for the petitioner.

Mr. Sunny K. Singla, Advocate, for the respondent.

DEEPAK GUPTA, J.

By way of this revision filed under Article 227 of Constitution of India, petitioner has assailed the order dated 15.12.2017 passed by Executing Court/ learned Civil Judge (Jr. Division) Malerkotla, whereby application moved by the respondent under Section 151 of the Code of Civil Procedure, has been directed to be consigned to the record court; whereas, earnest money of ₹26 lakh already paid by the petitioner has been directed to be forfeited.

2. Brief fact of the case are as under:-

2.1 Gurmail Singh (*respondent herein*) was the owner of 43 bighas of suit land, which he agreed to sell to Jagjit Singh (*petitioner herein*) vide an agreement to sell the same dated 30.04.2009 at the rate of ₹4,10,000/- per bigha. Earnest money of ₹26 lakhs was paid. Sale deed was agreed to be executed up to 30.11.2009. Two suits were filed by parties to the agreement.

2.2 Civil Suit No.138 of 2010 was filed by the vendor-Gurmail Singh seeking declaration to the effect that the agreement to sell dated 30.04.2009 be declared as rescinded and earnest money be deemed as forfeited, as defendant-vendee had failed to get the sale deed executed.

2.3 On the other hand, the vendee-Jagjit Singh filed a separate Civil Suit No.194 of 2010 seeking specific performance of the agreement to sell dated 30.04.2009 and in the alternative, for recovery of Rs.1,76,30,000/- and for permanent injunction to restrain the defendant of the suit from alienating the suit land.

2.4 Both the suits were consolidated. Issues were framed and after taking evidence produced by the parties, vide a common judgment dated 16.09.2015 (*Annexure P-1*), the Civil Suit No.138 of 2010 filed by vendor-Gurmail Singh was dismissed; whereas, Civil Suit No.194 of 2010 filed by vendee-Jagjit Singh was decreed to the following effect.

“In view of my findings on the above issues, Suit No.1 i.e. Suit No.138 dt.14.6.2010 titled as "Gurmail Singh Vs. Jagjit Singh" is dismissed whereas Suit No.2 i.e. Suit No.194 dt.08.9.2010 titled as "Jagjit Singh Vs. Gurmail Singh" is decreed with cost to the effect that Jagjit Singh (plaintiff of consolidated suit) is entitled to specific performance of agreement to sell dt.30.4.2009 Ex.D1 regarding suit property on payment of remaining proportionate sale consideration by deducting amount of earnest money of Rs.26,00,000/-, already paid. Plaintiff, Gurmail Singh is also directed to hand-over possession of such land to the Defendant, Jagjit Singh. The Plaintiff Gurmail Singh is granted two months time from the date of receiving copy of judgment, to execute the sale deed, failing which, plaintiff will be at liberty to approach court of law to execute the same. Decree sheet be prepared accordingly and file be consigned to record room after due compliance.”

2.5 Thus, as per the relief granted by the trial Court, vendor-Gurmail Singh was granted two months time to execute the sale deed, failing which plaintiff-vendee-Jagjit Singh was given liberty to approach the Court of law to get the decree executed.

3.1 Interestingly, despite the expiry of two months from the date of the decree, the decree holder-vendee Jagjit Singh did not approach the Court to file the execution for getting the sale deed executed in his favour. Rather, it is the vendor-judgment debtor-Gurmail Singh, who moved an application on 30.03.2016 under Section 151 CPC (*Annexure P-2*) for compliance of the judgment & decree dated 16.09.2015. In the said application, he also made reference of a legal notice dated 05.10.2015, which he had sent to the decree holder-vendee-Jagjit Singh for getting the sale deed executed on 21.10.2015. Reply was received from Jagjit Singh through his counsel. However, on the date mentioned in the notice, the decree holder did not appear for getting the sale deed executed and registered in his favour. In these circumstances, prayer was made by the applicant/vendor-judgment debtor Gurmail Singh for giving direction to the respondent-Jagjit Singh for getting the sale deed executed in his favour in compliance of the judgment & decree dated 16.09.2015. It was further prayed that in case of default, the said decree be rescinded and applicant-Gurmail Singh be declared as owner in possession of the property in question without any encumbrance.

3.2 Reply to the application was filed opposing the same.

3.3 Both the parties were called in Court. Despite granting various opportunities, the respondent of the application i.e. decree holder-vendee-Jagjit Singh failed to get the sale deed executed. In these circumstances, the impugned order was passed by the Court, which is to the following effect:-

“Present: Sh. J.P. Kalia, Advocate, counsel for JD/Applicant.

Sh. R.R. Jain, Advocate, counsel for DH/Respondent.

Perusal of file reveals that present Application under Section 151 CPC has been filed by JD to comply with the judgment and decree dated 06.09.2015. Perusal of file further reveals that Respondent-Jagjit Singh had filed an suit for Specific Performance of Agreement to Sell dated 30.04.2009 which was decreed vide judgment and order dated 16.09.2015 passed by Sh. Inderjit Singh, PCS, Civil Judge, Junior Division, Malerkotla. Applicant-Gurmail Singh filed present Application on 30.03.2016 for issuance of directions to the Respondent, DH/Jagjit Singh for getting the sale-deed executed in his favour in compliance of judgment and decree dated 16.09.2015. Respondent/DH Jagjit Singh appeared on 03.04.2016 and he has taken 8-opportunities to file his reply. Applicant-Gurmail Singh is ready to execute the sale-deed from the date of filing present Application and DH-Jagjit Singh himself made a statement on 18.07.2017 that he will get the sale-deed executed in his favour till 23.10.2017 failing which he will have no objection if the earnest money of Rs.26 Lacs be forfeited. ON his request case was adjourned for execution of sale-deed. On 13.11.2017 Applicant-Gurmail Singh produced affidavit regarding his presence attested by Sub-Registrar, Malerkotla. DH-Jagjit Singh also produced affidavit of his presence which was got attested by him from Notary Public. On 13.11.2017 both the parties leveled allegations against each other regarding their absence from the office of Sub-Registrar, thereafter, this Court issued directions to both the parties to appear before the Court on 27.11.2017 and this Court had also issued directions to DH to bring remaining sale consideration. Thereafter, Jagjit Singh again produced Jaswinder Singh on 29.11.2017 and stated that Jaswinder Singh will make payment of remaining sale consideration, but he obtained next date of hearing i.e.. 07.12.2017. On 07.12.2017, he

again obtained next date i.e., 08.12.2017 to get sale-deed executed in his favour. Every time DH-Jagjit Singh seeking adjournment on one pretext or another. Applicant-Gurmail Singh who is old aged person accompany with his young daughter remained present before the Court since morning till evening, but Jagjit Singh is playing hide and seek not only with Gurmail Singh rather with this Court also. It seems that Jagjit Singh is not interested for getting the sale-deed executed in his favour. Sh. R.R. Jain, Advocate appearing on behalf of DH- Jagjit Singh submitted that wants to file an Application that DH has no objection if Gurmail Singh executes sale-deed directly in favour of Jagjit Singh after receiving sale consideration directly from him. However, this Court is of the considered view that there is no need to file this Application because it is only sweet Will of Gurmail Singh as to whether he wants to receive sale consideration is directly from Jaswinder Singh because sale consideration required to be passed from Jagjit Singh. There is no privity of contract between Jaswinder Singh and Gurmail Singh. Even at 3.45 PM today itself, this Court asked Jagjit Singh as to whether he is ready to get sale deed executed or whether payment in the shape of draft (as per directions issued by this Court on last date of hearing) is ready, then he replied in negative. Hence, there is no justification to give any further adjournment. This Court is of the considered view that it is duly proved on the file that Jagjit Singh failed to comply with the directions of judgment decree dated 16.09.2015. Hence, amount of Rs.26 Lac already paid by the Gurmail Singh as Earnest Money to Jagjit Singh stands forfeited. File be consigned to record- room after due compliance.”

4.1 Assailing the aforesaid order, it is contended by the petitioner/ decree holder-Jagjit Singh that one Randhir Singh was in possession of the suit land and, thus, the judgment debtor/vendor was not in possession thereof. It is further contended that land had also been given for making brick kilns and in these circumstances the contract

stood rescinded. Petitioner further contends that trial Court could not have ordered for forfeiture of the earnest money, as no such relief has been granted.

4.2 The only contention raised by learned counsel for the petitioner before this court is that Court could not have ordered for forfeiture of the earnest money and that petitioner/decreed holder-Jagjit Singh is entitled for refund of the said earnest money along with interest.

5.1 Refuting the aforesaid contentions, it is argued by learned counsel for the respondent/judgment debtor that no execution was filed by the decree holder Jagjit Singh. Rather, it is the judgment debtor/respondent, who had filed the application under Section 151 CPC after serving a legal notice, but it is the petitioner who failed to get the sale deed executed in his favour despite granting opportunities to him. Even after appearing before the Court, Court granted adequate opportunities, but he failed to get the sale deed executed.

5.2 Learned counsel also contends that Randhir Singh, to whom the possession had been given, was produced in the Court by the respondent and said Randhir Singh made a specific statement that he was ready to handover the possession to the decree holder/petitioner Jagjit Singh, in case he gets the sale deed executed in his favour. Ld. counsel also submits that there was no privity of contract between the respondent and Gurwinder Singh, in whose favour petitioner wanted to get the sale deed executed and as such, the trial Court has rightly passed the impugned order, forfeiting the earnest money. Ld. counsel has drawn attention towards the fact that petitioner himself had made the statement before the Court that in case he does not get the sale deed executed by a specified date, his earnest money may be forfeited.

6. After considering submissions of both the sides, this Court does not find merit in the present petition.

7. As per the decree dated 16.09.2015 (*Annexure P-1*) passed by the trial Court, two months time was granted to the judgment debtor to execute the sale deed in favour of the decree holder. Decree holder did not file any execution for getting the sale deed executed. As is evident from the paper book, it is the judgment debtor/respondent, who gave legal notice to the decree holder for getting the sale deed executed in compliance of the decree. As on the agreed date mentioned in notice, he did not appear, it is again the respondent, who approached the Court by moving application under Section 151 CPC.

8. The impugned order would reveal that both the parties were called in person and the Court again ordered for execution of the decree on payment of the balance consideration by the decree holder. Decree holder initially took the objection that one Randhir Singh was in possession. Said Randhir Singh was produced and he specifically made statement that in case sale deed is executed in favour of Jagjit Singh/DH, he will hand over the possession to him. The decree holder did not take any step for getting the sale deed executed in his favour. The impugned order also reveals that during the proceedings, he himself made the statement 18.07.2017 that in case he failed to get the sale deed executed by a specified date (23.10.2017), the earnest money may be forfeited. Still he failed to get the sale deed executed. The contention that decree holder/petitioner wanted to get the sale deed executed in favour of one third person namely Gurwinder Singh is absolutely without any merit, as no such decree was passed in favour of Gurwinder Singh. The decree holder cannot be allowed to turn to the terms of the agreement to sell so as to get the sale deed executed in favour of a third party, as there is no privity of contract between the judgment debtor

and the third party and as such, Id. trial Court rightly declined the said contention raised by counsel for the petitioner.

9. Further, in the judgment & dated 16.09.2015 (*Annexure P-1*), there is no direction by the trial Court that in case the decree holder fails to get the sale deed executed in his favour, then the earnest money was to be returned. As despite making statement on 18.7.2017 to the effect that in case he failed to get the sale deed executed by 23.10.2017, the earnest money may be forfeited, he (petitioner/DH) failed to get the sale deed executed in his favour, a new cause of action arose in favour of applicant/ JD Gurmel Singh and therefore, in these facts and circumstances, trial Court did not commit any error in reaching to the conclusion that as the decree holder had failed to get the sale deed executed in his favour, therefore, the earnest money stood forfeited.

10. Consequent to above discussion, this court finds the present petition to be devoid of any merit and so, the same is hereby dismissed.

31.08.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No