

3. Sh. Surjeet Singh and Sh. Kulwant Singh filed a suit for specific performance of the agreement to sell against Sh. Bakshish Singh which was decreed on 27.05.2002. The operative part of the judgment reads as under:-

“It is ordered that the suit of the plaintiffs as such deserves to be dismissed but considering the facts that the defendant is still ready and willing to perform his part of contract, a decree for specific performance of the admitted agreement to sell dated 16.05.1997 Ex. PA is passed subject to the plaintiffs depositing the balance amount of sale consideration of Rs.3,28,000/- within a period of three months from the date of the judgment today.

In the facts and circumstances of the case where the plaintiffs are seen to be at fault, there is no order as to costs.”

4. Sh. Bakshish Singh filed an appeal against the judgment and decree passed by the trial Court which was dismissed on 24.04.2004. Thus, the conditional decree for specific performance of the agreement to sell subject to deposit of the remaining amount of Rs.3,28,000/- within a period of three months from the date of the judgment was upheld. Since, the judgment of the trial Court merged with the judgment of the First Appellate Court, hence the date of judgment would be 24.04.2004. The decree holders namely Sh. Surjeet Singh and Sh. Kulwant Singh were required to deposit the amount of Rs.3,28,000/- within a period of three months from the date of judgment i.e. 24.04.2004, however, they did not deposit the amount. Thus, no decree came into force as the decree holder failed to fulfill the condition.

5. On 19.05.2003, Sh. Bakshish Singh executed a sale deed in favour of Harjinder Singh. Subsequently, on 31.03.2004, Sh. Harjinder Singh sold 14 Kanals 5 Marlas of land in favour of petitioner Nos. 1 and 2, in CR

No. 7964 of 2017 whereas he sold 13 Kanals 4 Marlas on 17.04.2005, in

favour of petitioner No.3 in CR No. 7964 of 2017. On 10.09.2015, the decree holders, namely, Sh. Surjeet Singh and Sh. Kulwant Singh filed an execution petition.

6. Thereafter, the Executing Court issued notice to the judgment debtor namely, Sh. Bakshish Singh and on his failure to appear, he was proceeded against ex-parte. However, the subsequent purchasers were never impleaded as party in the execution petition.

7. On 16.09.2016 the Executing Court passed the following order in CR No.7869 of 2017:-

“Report of Ahalmad sought regarding whether any stay regarding the present proceedings have been received, who has reported that no stay order has been received from any Court till date. Ld. Counsel for DH also submitted that nos stay against the present proceedings has been granted. Arguments heard on the application fro giving permission to deposit the remaining sale consideration, amounting Rs. 3,28,000/- in the relevant head. Ld. Counsel for DH has submitted that due to unavoidable circumstances i.e. the death of close relative of DH having remained in custody under section 302 of IPC. He could not file the execution petition and the present application which promptitude. However, the execution petition has been filed within limitation period of 12 years. The plaintiff’s suit for specific performance was decreed on 27.5.2002 subject to plaintiff depositing the balance amount of sale consideration Rs.3,28,000/- within a period of three months from the date of judgment. Against this plaintiff preferred an appeal claiming that he had already paid the entire sale consideration. However this claim was declined and appeal was dismissed on 24.4.2004, hence, the present execution petition. It has been argued that the plaintiff may be allowed to deposit the balance sale consideration. Heard DH at the liberty to deposit the balance sale consideration in the government treasury as per the rule and own responsibility. The application is

disposed off to come up 10.10.2016 for further proceedings”.

8. Subsequently, the sale deed of the suit land including the land which was already purchased by the subsequent purchasers was executed by the Court officials in favour of decree holders i.e. Sh. Surjeet Singh and Sh. Kulwant Singh. Thereafter, the proceedings for delivery of possession was initiated. At that stage, the judgment Debtor- Sh. Bakshish Singh and Sh. Malkiat Singh, Sh. Baljit Singh and Smt. Ramandeep Kaur, the subsequent purchasers filed an objection petition.

9. The learned Executing Court has partly dismissed the objection petition vide order dated 13.10.2017. It has been held that in absence of decree for possession in favour of the decree holder, no warrants of possession can issued.

10. Challenging the correctness of the aforesaid order, these revision petitions have been filed.

11. Heard the learned counsel representing the parties at length and with their able assistance perused the paper books.

12. On one hand, the learned Senior counsel representing the petitioners in both the revision petitions contends that in a suit for specific performance of the agreement to sell, a conditional decree is passed directing the decree holders to deposit the amount within a period specified. He submits that the aforesaid conditional decree would become complete decree only if the condition as stipulated by the Court is fulfilled by the decree holder. In absence thereof there will be no decree comes into existence/subsists in favour of the decree holders.

13. Per contra, the learned counsel representing the respondents submits that the petitioners have not challenged the correctness of the order passed by the Executing Court, on 16.09.2016.

14. This Court has considered the submissions of the learned counsel representing the parties.

15. In a suit for specific performance of the agreement to sell ordinarily the conditional decree is passed which would become executable/implementable only if the decree holder fulfills the condition. In this case, a conditional decree was passed in favour of Sh. Surjeet Singh and another directing them to deposit Rs. 3,28,000/- within a period of three months from the date of judgment i.e. 27.05.2002, however, they failed to fulfill the aforesaid pre-condition. An appeal filed by Sh. Bakshish Singh was dismissed on 24.04.2004. Hence, the conditional decree passed by the trial Court merged into the decree passed by the First Appellate Court. Thus, the period of three months for deposit of the amount will begin to run from 24.04.2004. Hence, the period came to an end on 24.07.2004. Once the decree holders failed to deposit the amount, there was no decree which could be executed. In this case, the execution petition was filed in the month of September 2015, i.e. after a period of more than 11 years. The decree holders never applied for extending the period for deposit of the amount. In these circumstances, there was no effective decree which could be executed. Once the decree passed in favour of the decree holder is subject to fulfillment of a condition, then in the eventuality of failure of the decree holder to fulfill that condition, no decree comes into force in favour of the decree holders. It is evident that on 16.09.2016, the Executing Court passed the order without

being alive to the aforesaid situation. Though, the Executing Court has recorded that decree holders remained in custody in a case under Section 302 IPC, however, the period for filing execution petition will begin to run only if there is a enforceable decree in favour of the decree holders.

16. As already noted, there was no decree in favour of the decree holders because they failed to fulfill the condition precedent for drawing of final decree.

17. As far as objection of the learned counsel representing the respondents that the correctness of the order dated 16.09.2016, has not been challenged, it may be noted that the same was passed by the Executing Court. Since, there was no decree in favour of the decree holders hence, the order, if any, passed by the Executing Court is without jurisdiction.

18. In view of the foregoing discussion, this Court is left with no choice but to set aside the impugned order dated 13.10.2017. The execution petition filed by Sh. Surjeet Singh and another shall stands dismissed.

19. Accordingly, both the revision petitions are allowed.

20. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

11.03.2024
Anu

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No