

122.

2024:PHHC:046880

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2078 of 2024

Date of decision: 05.04.2024

Rajinder Kumar

.... Petitioner

Versus

Prithvipal Singh Gill and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Krishan Sehajpal, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to set aside the order dated 14.03.2024 (Annexure P-1) passed by learned Civil Judge (Junior Division), Balachaur, whereby third party objections (Annexure P-4) filed by the petitioner in the execution application i.e. EXE/4/2023 filed by respondent No.1-Prithvipal Singh Gill in Civil Suit No.343 of 2020 titled as *Prithvipal Singh Gill Versus Parminder Singh and another*, have been dismissed.

2. Brief facts necessary for the disposal of this revision petition are that respondent No.1-Prithvipal Singh Gill filed a suit bearing No.343 of 2020 for possession by way of specific performance of an agreement to sell dated 29.11.2018 executed by respondent No.2-Parminder Singh in favour of respondent No.1. Respondent No.2 was proceeded against ex-parte. Vide judgment and decree dated 23.11.2022, said suit was decreed in favour of respondent No.1. Copy of decree-sheet is annexed as Annexure

P-2. Respondent No.1 filed application (Annexure P-3) for execution of the decree dated 23.11.2022 before the Executing Court at Balachaur.

2.1 The petitioner on coming to know about the execution, filed third party objections on the ground that the petitioner-Objector is already in possession of the suit property since 10.04.2019, the date when respondent No.2-Parminder Singh-Judgment Debtor entered into an agreement with the petitioner. It was submitted that the electricity and water connection of the suit property are also in the name of the petitioner-Objector. The alleged agreement to sell dated 29.11.2018 qua the suit property is procured one and fabricated one. The petitioner also filed civil suit for specific performance of agreement to sell dated 10.04.2019 and for permanent injunction against respondent No.1-Decree Holder and respondent No.2-Parminder Singh-Judgment Debtor. In the said suit, interim injunction was granted, vide which, respondents No.1 and 2 were restrained from alienating the suit property in any manner.

2.2 The objections filed by the petitioner in the execution of the decree dated 23.11.2022, were dismissed vide order dated 14.03.2024 which has been impugned by way of present revision petition.

3. Learned counsel for the petitioner has argued that the petitioner-Objector is in possession of the suit property. The impugned order is contrary to the provisions of Order 21 Rule 97, 98, 100, 101 and 104 of CPC. The petitioner is claiming possession over the suit property on the basis of agreement to sell dated 10.04.2019, so, the Executing Court

was required to decide said objections like a civil suit, but the Executing Court has issued warrant of possession.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the file.

5. The case of the petitioner-Objector is that respondent No.2-Judgment Debtor entered into an agreement to sell dated 10.04.2019 with him and possession of suit property was also handed over to him on the basis of said agreement. As per Section 17(1A) of Indian Registration Act if possession is transferred at the time of entering into agreement to sell so entered between the parties, it requires registration, but in the case in hand, said agreement dated 10.04.2019 is unregistered one.

5.1 Respondent No.1 filed suit well in time in the year 2020 for specific performance of agreement to sell dated 29.11.2018. The cause of action arose when defendant did not turn up before the Sub-Registrar, Balachaur on 14.09.2020, stipulated date for execution of sale deed. The petitioner-Objector filed civil suit i.e. CS-37-2024 for specific performance of agreement to sell dated 10.04.2019 in the year 2024, though he came to know about the agreement to sell dated 29.11.2018 in the year 2020 as he had filed Civil Suit No.209 of 2020 against the decree holder, which suit was dismissed in default on 30.03.2022. The decree holder also got registered an FIR registered against the petitioner and respondent No.2-Rajinder Kumar. A suit for specific performance can be filed within three years from the date of cause of action, whereas the petitioner filed suit after more than 4 years.

5.2 Since it was found that the execution of agreement to sell dated 29.11.2018 was within the knowledge of the petitioner-Objector, so, the averments of the petitioner-Objector that he came to know about the passing ex-parte judgment and decree in favour of respondent No.1 only on 16.02.2024, is *per se* false.

5.3 Thus, it is proved that the petitioner despite knowing that respondent No.1 had filed a suit for specific performance and he did not initiate proceedings for specific performance of agreement to sell in his favour, so, he has no right to protect his possession as a mere agreement to sell and that too unregistered agreement, does not confer any right or title in the property. The suit has been decreed in favour of respondent No.1, so he is the owner of the suit property. Respondent No.1 has every right to get possession of the suit property. When there is no triable issue, the court is not required to frame issue and is empowered to decide the objections on the basis of material on record.

6. In view of above, no ground is made out for interference in the well reasoned order passed by the learned court below. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

April 05, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No