



CR-2260-2024

-1-

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

(135)

CR-2260-2024

Date of decision: - 31.07.2024

Surjeet and others

....Petitioners

Versus

Kamlesh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sushil Jain, Advocate
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 23.01.2024 (Annexure P-8) passed by the Additional Civil Judge (Senior Division), Sonipat, whereby the objections (Annexure P-7) filed by the petitioners in the Execution Petition No.17 of 2021 titled "Kamlesh Vs. Pushp Lata", have been dismissed.

2. Admittedly, Kamlesh wife of Balwan Singh Malik (respondent No.1) had filed a suit for eviction/possession and for recovery of mesne profit with consequential relief of permanent injunction on 25.03.2014 against Pushp Lata, mother of the petitioners. The said suit for eviction was filed on the ground that respondent No.1/Kamlesh was the owner of the house in question on the basis of a



CR-2260-2024

-2-

registered sale deed dated 24.07.2008 and on the plea that the said house was let out by respondent No.1 to Pushp Lata on the monthly rent of Rs.1,500/- per month, which was later enhanced to Rs.2,000/- per month. It was further averred that since February, 2012, the said Pushp Lata stopped paying rent and accordingly a legal notice dated 16.07.2013 was issued for termination of the tenancy. In the said case, notice was issued, but the said Pushp Lata did not appear despite service and vide judgment and decree dated 18.09.2019 (Annexure P-5), the trial Court directed the said Pushp Lata to hand over the vacant possession of the suit property to the plaintiff within a period of three months from the date of the judgment and also to pay the outstanding amount of rent of Rs.48,000/- from March, 2012 @ Rs.2,000/- per month till actual realization along with interest @ 6% p.a. A perusal of the said judgment would show that the registered sale deed dated 24.07.2008 was duly exhibited as Ex.PA. It has been fairly stated by learned counsel for the petitioners that an application for setting aside the said ex parte decree was filed by Pushp Lata, but however, the same has been dismissed and that there is no further challenge made to the said decree or the subsequent orders.

3. Respondent No.1 had filed an execution application for execution of the decree dated 18.09.2019 in her favour, but the petitioners as well as the said Pushp Lata had filed two separate objections, which have been dismissed by the trial Court, vide impugned order dated 18.04.2024. In the impugned order, it has been observed that the petitioners are claiming an agreement to sell from Ishwar Singh in favour



CR-2260-2024

-3-

of Om Pal, father of the petitioners and husband of Pushp Lata, and as per settled law, the agreement to sell does not make him the owner of the property and the persons become owners on the execution of a registered sale deed. Further, the said Pushpa Lata is a judgment debtor and thus, if any plea had to be taken in respect to any agreement to sell, the same should have been taken in the proceedings, in which, the judgment and decree dated 18.09.2019 was passed. With respect to plea of the petitioners, they were not parties in the earlier proceedings, the Executing Court had observed that once the mother i.e. Pushpa Lata was a party to the judgment and decree, which had attained finality, then, in view of explanation VI attached to Section 11 of CPC, finding against Pushp Lata would also be applicable qua other objectors, who are sons of said Pushp Lata.

4. Learned counsel for the petitioners has submitted that Om Pal, who is the father of the petitioners, had an agreement to sell dated 16.02.1995 with Ishwar Singh and on the basis of the said agreement, the petitioners have a right to object to the execution of the judgment and decree dated 18.09.2019. It is further submitted that the suit was instituted on 25.03.2014, subsequent to the said agreement and thus, the petitioners would be third parties and would have a right to oppose the execution. Learned counsel for the petitioners has also submitted that the suit for specific performance has also been filed on the basis of the same.

5. This Court has heard learned counsel for the petitioners and has perused the paper-book.



CR-2260-2024

-4-

6. It is not in dispute that wife of Om Pal, the mother of the petitioners i.e., Pushp Lata was the party to the eviction petition, which culminated into the passing of the judgment and decree dated 18.09.2019. It is also not in dispute that an application for setting aside the ex parte decree was filed by Pushpa Lata, which was also dismissed and the judgment and decree dated 18.09.2019 (Annexure P-5) and subsequent orders had attained finality and no further challenge has been made to the same. Thus, Pushp Lal is a judgment debtor and had no right to file the third party objection. Even as per the best case of the petitioners, the agreement to sell (Annexure P-1) is in favour of Om Pal, father of petitioners and husband of Pushp Lata. The Executing Court has rejected the plea of the petitioners of not being a party in the earlier proceedings in which only Pushpa Lata was a party by placing reliance on explanation VI attached to Section 11 of CPC, which is reproduced herein below: -

“Where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

7. Since the petitioners and Pushp Lata, as per the best case of the petitioners, are the legal representatives/successors-in-interest of the said Om Pal, thus, any order suffered by Pushp Lata, one of the legal representatives, would also be applicable in view of the above-said provision to the petitioners who are other legal representatives. No provision of law to the contrary or any judgment in favour of the petitioner has been shown to this Court on the said aspect.



CR-2260-2024

-5-

8. It would also be relevant to mention that even the alleged agreement to sell (Annexure P-1) had been executed by Ishwar Singh in favour of the father of the petitioners. It is not the case of the petitioners that Ishwar Singh is the owner of the property and even in the objections (Annexure P-7), it had been averred that the said Ishwar Singh had also agreement to sell in his favour from Ram Kanwar. Thus, father of the petitioners/Om Pal was at best an agreement to sell holder from an agreement to sell holder. It is settled law that an agreement to sell holder has no right in the property except to seek specific performance. A perusal of the objections would show that the alleged civil suit for specific performance had not been filed by the petitioners, but had been filed by Pushpa Lata and the said civil suit is of the year 2018, stated to be Civil Suit No.518/2018 and thus, for an alleged agreement to sell of the year 1995, the civil suit for specific performance has been filed after 23 years i.e. in the year 2018. Pushp Lata in any case is a judgment debtor. On a pointed query raised as to whether the decree holder Kamlesh who has sale deed dated 24.07.2008 in her favour, which is prior to the civil suit of the year 2018 has been made a party to the said civil suit or not, as on account of the said sale deed, she would be a necessary party, the learned counsel for the petitioners has fairly submitted that he is not sure about the said aspect.

9. From the above-said facts and circumstances, it is apparent that the objections have been filed by the petitioners only to delay the execution proceedings and the same are meritless and the impugned order

CR-2260-2024

-6-

rejecting the said objections, which have been filed in tandem with Pushp Lata, mother of the petitioners, has been rightly passed. There is no illegality in the impugned order and thus, the present revision petition being meritless deserves to be dismissed and is accordingly dismissed.

July 31, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes