



ESA No. 11 of 2021 (O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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ESA No. 11 of 2021 (O&M)
Date of Decision: 24.07.2024

M/s Pyramid Buildtech Private Limited Appellant

Versus

Deva and others Respondents

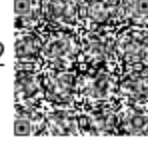
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Suman Jain, Advocate and
Mr. Manmohan, Advocate and
Mr. Rishabh Jain, Advocate for the appellant.

Mr. Kulbhushan Sharma, Advocate and
Mr. Abhishek Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J.(ORAL)

1. This execution second appeal has been filed by a purchaser pendente lite. Both the courts have dismissed this objection petition on the ground that the appellant has purchased the property during the pendency of the suit.
2. Learned counsel representing the appellant submits that there is no decree directing delivery of physical possession of the property. He submits that the decree holder (respondent) has become co-owner in the unpartitioned land to the extent of 8 kanals. He further submits that the legal heirs of judgment debtor are also owner of nearly 6 kanals land in the aforesaid khewat.
3. Learned counsel representing the respondent submits that as per Order 21 Rule 101, the appellant being governed by Rule of lis pendens have no locus to file objections. He submits that the decree holder can be



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delivered possession of the land which was in possession of judgment debtor i.e. Gyasi and which has been sold to the appellant. He further submits that legal representative Gyasi is left with no share in the joint land.

4. This Court has considered the submission. It is evident that the learned counsel representing the appellant does not dispute that the sale deed in favour of appellant is governed by Rule of lis pendens. Hence they cannot claim to be *bona fide* purchasers.

5. The respondent decree holder namely Deva filed suit for possession by way of specific performance of agreement to sell. He sought relief of possession with respect to 8 kanal land out of unpartitioned land measuring 42 kanals 12 marlas which is equivalent to 160/892 share. The suit filed by him was decreed on 13.02.2009. The operative part of the decree passed by the trial Court reads as under:-

“This suit is coming for final disposal before me (Smt. Rachna Gupta, Add. Civil Judge (Sr. Div.) Palwal) in the presence of O.P. Tawatia, Adv. for Plff and exparte for Deft.

It is ordered that the suit of the plaintiff succeed and same is hereby decreed with costs. A decree for possession by way of specific performance of agreement dt.1-6-2001 directing the Deft. to execute and get registered the sale deed of the suit land mentioned in para no. 1 of the plaint or receiving the balance sale consideration within a period of two months from the date of this judgement. On account of failure on part of Deft., the Plff shall be at liberty to get executed and registered the sale deed with the assistance of the court.”

6. In that context, it would be relevant to reproduce Para 1 of the plaint which reads as under:

“Detail of Para No. 1: Agri. Land bearing the Khewat/Khatoni No. 46/49 rect. no. 29, Kila no. 4/2 (6-12), 5/1 (2-3), 7 (8-0), 14/1 (5-7), 17 (8-0), rect. no. 42 Kila no. 4/1 (6-0), rect. no. 52 kila no. 24/1 (3-17), rect. no. 42 kila no. 14/2 (2-13),



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measuring 42 kanals 12 marlas to the extent of 160/892 share, i.e., 8 kanals situated at vill. Dudhola, Teh. Palwal, Distt. Faridabad.”

7. Thus, it is evident that there is no decree to deliver the possession of land comprised in a particular khasra number in an unpartitioned property in a joint land which has let been partition.
8. Consequently, the decree holder is entitled to get only symbolic possession of the land in execution of decree to get physical possession, he will have to seek partition.
9. Keeping in view of aforesaid facts, the appeal is disposed of.

24.07.2024
Rajeev (rvs)

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No