



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3304 of 2023 (O&M)

Date of Order:22.05.2024

Mohan Singh (since deceased) through His LRs

.Petitioner

Versus

Gurtek Singh (since deceased) through His LRs
and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arjun Veer Sharma, Advocate, for the petitioner.

Mr. Vipin Kumar Sharma, Advocate
for the applicant-respondent no.1(i to v)

ANIL KSHETARPAL, J

CM-9332-CII-2024

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Gurtek Singh [respondent no.1] mentioned in paragraph 2 of the application, is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

MAIN

4. In this revision petition, the petitioner assails the correctness of the Executing Court's order dated 17.03.2023, while dismissing his objection petition.

5. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

6. Sh. Shiv Kumar and Naranjan Dass were joint owners of the



property on the basis of sale deed executed in their favour on 27.01.1995, which was registered on 02.02.1995. They executed the agreement to sell in favour of the petitioner and Sh. Mohan Singh, on 26.12.2003. However, Sh. Shiv Kumar and Sh. Naranjan Dass did not honour the agreement. Hence, the petitioner filed suit for specific performance of the agreement to sell on 08.12.2006, which was decreed on 20.09.2014. The first appeal filed by Sh. Shiv Kumar and Sh. Naranjan Dass was dismissed on 17.01.2018 and in the execution petition, the Court officially appointed Local Commissioner to get the sale deed executed in favour of the petitioner on 04.07.2017.

7. Sh. Shiv Kumar is alleged to have entered into another agreement to sell with respect to the same property in favour of Sh. Gurtek Singh with respect to his share in the property. Again Sh. Shiv Kumar did not honour the agreement, forcing Sh. Gurtek Singh to file a suit for specific performance of the agreement to sell dated 03.07.2009. In the aforesaid suit, the petitioner's application under Order 1 Rule 10 CPC was allowed. Ultimately, the relief of specific performance of the agreement to sell was not granted in favour of Sh. Gurtek Singh and in alternative, relief of earnest money in favour of Sh. Gutek Singh and against Sh. Shiv Kumar was granted.

8. In execution petition, filed by Sh. Gurtek Singh against Sh. Shiv Kumar, the suit property was attached. The petitioner filed objection which has been dismissed by the Executing Court with the following observations:-

“Perusal of the file reveals that vide order dated 10.08.2018 Warrant of attachment was issued by Ld. Predecessor of this Court Sh. Suresh Kumar Goyal, Ld. ACJSD, Ludhiana. Warrants of attachment received



back duly effected and the case was fixed for filing application under Order 21 Rule 66 CPC and for filing objections to attachment, if any. At this stage, it is relevant to mention that 'Section 47 of CPC' provides that Executing Court cannot beyond the decree passed by the Civil Courts". Based on the decree, attachment of immovable property was done by Ld. Civil Court under Oder 21 Rule 54 CPC. The judgment in question as alleged by the objector is not binding or passed against Decree holder Gurtek Singh. Moreover, when the attachment was done the property in question stood unencumbered. No revision has been filed against the order of the court that passed the decree.

No ground is made out that justifies objections of the objector and in view of the order dated 09.07.2018, objections of objector stands dismissed. Let, sale warrants of attached property be issued as per following schedule:"

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

10. In the civil suit filed by Sh. Gurtek Singh, the petitioner was party to the suit. No decree for recovery was passed against the petitioner. Moreover, the petitioner herein has a prior/preferential right over the property as agreement to sell in his favour is dated 26.12.2003. Moreover, the alleged agreement to sell in favour of the decree holder (respondent) is during the pendency of the suit filed by the petitioner. Hence, the same is governed by the rule of lis pendens. The attention of the court has not been drawn to any finding that the sale in favour of the petitioner was in order to defeat the rights of Sh. Gurtek Singh. Moreover, the Executing Court has passed the order without adverting to the objection filed by the petitioner. If

an objection petition has been filed, the Executing Court is required to examine/analyze and evaluate the same. It is evident that the Executing Court has failed to discharge his duties.

11. Keeping in view the aforesaid facts and discussion, the impugned order is set aside and the revision petition is allowed.

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

May 22, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO