



ESA-28-2017 (O&M)

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**123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****ESA-28-2017 (O&M)**

Date of decision: 25.07.2024

Om Parkash (since deceased) through his LRs

....Appellant

Versus

Smt.Asha Rani (since deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Kartar Singh, Advocate for the appellant

Mr.Sanjeev Kumar Arora, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Execution Second Appeal, the purchaser, governed by the rule of lis pendens, challenged the correctness of concurrent findings of fact arrived at by the courts below while dismissing his objections. Sh.Jaswant Singh and his wife Smt.Chanderkanta purchased the property from Sh.Labha Ram by a registered sale deed on 28.02.2005. They agreed to sell the property in favour of Smt.Asha Rani vide agreement to sell dated 23.01.2006. They did not honour the agreement. Hence, Smt.Asha Rani filed a suit for specific performance of the agreement to sell, which was decreed on 07.09.2011. The appellant claims that Smt.Chanderkanta sold her share in favour of Smt.Manjit wife of Sh.Ashok on 09.03.2011, who in turn sold the property to the objector vide sale deed dated 20.12.2011. The objector



constructed the house on the aforesaid plot. Both the courts dismissed the objection petition filed by the appellant.

2. Learned counsel representing the parties have been heard at length.

3. Learned counsel representing the appellant has made the following submissions:-

i) House in possession of the appellant is different from that of the suit property

ii) the decree was passed ex-parte against Smt.Chanderkanta and it was a collusive decree.

iii) legal representatives of Sh.Sh.Jaswant Singh were not bound by the decree

iv) issues were not culled out by the Executing Court before deciding the objections.

4. Per contra, the learned counsel representing the respondents submits that the suit property is same because the sale deed executed in favour of Sh.Jaswant Singh and Smt.Chanderkanta by Sh.Labha Ram on 28.02.2005 is identical to the property, which was agreed to be sold. He further submits that Sh.Jaswant Singh, one of the co-owners, died after entering into an agreement to sell. When the suit was filed, the heirs of Sh.Jaswant Singh including Smt.Chanderkanta, who was one of the legal representatives, was impleaded as party. He further submits that Sh.Jaswant Singh's heirs would be bound by the agreement to sell.

5. On a Court question, the learned counsel representing the appellant has failed to draw the attention of the Court to such objection



in the objection petition or submission made in this respect before the courts below. The appellant cannot be permitted to take up a new point for which, no foundation has been made for the first time in the Execution Second Appeal. Sh.Jaswant Singh and Smt.Chanderkanta jointly entered into an agreement to sell. Hence, after the death of Jaswant Singh, his children will remain bound by the aforesaid agreement.

6. The learned counsel representing the appellant, while drawing the attention of the Court to Section 15 of the Specific Relief Act, 1963, submits that only party to the agreement is bound by the agreement. This Court has considered the submissions made by the learned counsel representing the parties, however, finds, no substance. Once the agreement is with respect to immovable property, the heirs will also remain bound by the agreement. Admittedly, neither Smt.Chanderkanta nor the appellant have ever challenged the correctness of the ex-parte decree. The aforesaid decree has become final. The appellant also never filed an application under order IX Rule 13 of the Code of Civil Procedure, 1908.

7. The last argument also does not have substance because the Executing Court is not bound to cull out the issues to decide objections by purchaser, who is governed by rule of lis pendens.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Hence, dismissed.



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

25.07.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE