

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCR-6827 of 2019 (O&M)
Date of Order:09.04.2024

Bhushan Kumar Manuja and another

.Petitioners

Versus

Ramdhari Goyal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Jain, Advocate
for the petitioners.

None for the respondent.

ANIL KSHETARPAL, J

1. This revision petition has been filed by the decree holder. A suit for specific performance of the agreement to sell with respect to House No.3402, Sector 37-D, Chandigarh, which was allotted on lease hold basis was decreed on 30.10.2008. There was another suit filed by the respondent- Ramdhari Goyal.

2. Both the suits were decided by a common judgment and the relief clause reads as under:-

“In view of my findings on above said issues, the main suit titled as Bhushan Kumar Manuja and another vs. Ra. Dhari Goel CS No.1248 of 2003 succeeds and is hereby decreed with costs. The defendant is directed to execute the sale deed in favour of the plaintiffs. The execution/registration of sale deed in favour of the plaintiffs will be subject to the condition of payment of 50% unearned increase in the value of land to the Chandigarh Administration and subject to permission from the competent authority as mentioned in allotment letter Ex.P1. The case titled as Ram Dhari Goel vs.

Bhushan Kumar Manuja and others CS No.48 dated 05.04.2002/229 dated 22.11.2006 consolidated with main suit is hereby fails and stands dismissed with costs. Copy of this judgment be placed in the consolidated case titled as Ram Dhari Goel vs. Bhushan Kumar Manuja and others. Decree sheets be prepared. File be consigned to record.”

3. The appeals filed by Sh. Ramdhari Goyal were dismissed on 09.04.2011.

4. As is evident that the suit for specific performance of the agreement to sell was decreed while directing the plaintiffs (petitioners herein) to pay 50% unearned increase in the value of the land to the Chandigarh Administration. That aforesaid decree became final. In the meantime, it has been stated that as per the policy of the Union Territory, Chandigarh, the lease hold property was permitted to be converted into free hold. Upon its conversion, the requirement of deposit of 50% of unearned increase in value of the property ceased to exist. The petitioners filed an application under Sections 151 and 152 of the Code of Civil Procedure, 1908, for correction in the judgment and decree passed by the court which has been dismissed on the ground that Section 152 of the Code of Civil Procedure, 1908 can be invoked for limited purpose of correcting clerical or arithmetical mistakes.

5. Despite receipt of notice from this court, the respondent has not entered appearance.

7. This Bench has heard the learned counsel representing the petitioners at length and with his able assistance perused the paper book.

8. The letter dated 14.11.2008, permitting the conversion of the building to free hold has been produced as Annexure P-4.

9. The learned counsel, on instructions from the petitioners, states that the entire amount payable on account of conversion has already been deposited by the respondent.
10. This court has analyzed the situation. The Union Territory, Chandigarh is not party to this litigation. However, the trial court decreed the suit subject to payment of 50% of unearned increase in the value of the property assuming that the property is lease hold. Though such matter may not strictly fall within the scope of Section 152 of the Code of Civil Procedure, 1908. However, the court has ample power to order amendment under Section 153 read with Section 151 of the Code of Civil Procedure, 1908. Section 153 of the Code of Civil Procedure, 1908, enables the court to pass orders amending any defect or error in any proceedings in a suit. In absence of specific power, the trial court should have invoked the inherent power under Section 151 of the Code of Civil Procedure, 1908.
11. Keeping in view the aforesaid facts, the impugned order passed by the trial court is set aside. The court is directed to amend the judgment and decree passed on 31.10.2008, after the petitioners produce material to prove that the entire conversion money as required for converting lease hold property into free hold has been deposited.
12. The revision petition is allowed.
13. All the pending miscellaneous applications, if any, are also disposed of.

April 09, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO