



In the High Court of Punjab and Haryana, at Chandigarh

Execution Second Appeal No. 10 of 2019 (O&M)

Date of Decision: 14.02.2025

Satpal Sharma

... Appellant(s)

Versus

Nathi Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Arav Gupta, Advocate
for the petitioner(s).

Mr. Shiv Kumar, Advocate
for the respondent.

Anil Kshetarpal, J.

I. Brief Facts

1. This execution second appeal has been filed by the decree holder to assail the correctness of the First Appellate Court's order passed on 27.11.2018.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. The appellant filed a suit for specific performance of the agreement to sell with respect to the plot No. FCA96 measuring 115 square yards, located in SGM Nagar, Tehsil and District Faridabad. The Trial Court decreed the suit vide judgment dated 31.03.2014. The First Appellate Court, instead of affirming the decree of specific performance, modified the decree while granting the relief of refund of earnest money along with interest. The aforesaid amount was not paid and that forced the appellant to file an execution petition. In the execution petition, the amount was not paid by the judgment debtor. Hence, the

property was auctioned on 09.02.2018. The judgment debtor (respondent) appeared in person in the execution petition on 22.12.2016 and was given an opportunity to file the objections while adjourning the case to 02.03.2017, 15.03.2017, 01.04.2017, 20.04.2017, 19.05.2017 and 21.07.2017. However, he filed an appeal on 29.09.2017 challenging the orders dated 21.07.2017 and 25.08.2017. As already noticed, in the meantime, the property was auctioned. At that stage, the judgment debtor filed the objection petition under Order XXI Rule 58 read with Sections 47 and 60(1)(ccc) of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). The Executing Court dismissed the petitioner’s objection petition. The First Appellate Court reversed the order passed by the Executing Court on the ground that the judgment debtor is entitled to exemption from attachment of one residential house as per Section 60(1)(ccc) CPC.

II. Arguments

3. The learned counsel representing the respondent submits that the charge will not be created on the said property unless the agreement to sell is found genuine. He relies upon the judgment in *Trimbak Narayan Hardas v. Babulal Motaji and Others 1973 AIR (Supreme Court) 1363*.

III. Analysis and Discussion

4. This Court has considered the submissions of the learned counsel representing the parties.

5. This Court in *Rulia Singh v. Munsha Singh (Civil Revision No. 6329 of 2019, decided on 03.11.2023)* has held that if a decree for recovery of earnest money along with interest is passed in a suit for specific performance of the agreement to sell, Section 60(1)(ccc) CPC shall not be

applicable because as per Section 55(6)(b) of the Transfer of Property Act, 1882, a charge is created on the property.

6. It would be noticed that in this case, the First Appellate Court held that in the facts and circumstances of the case, the relief of specific performance, which is discretionary, is not made out, hence, it shall not be granted. Hence, the refund was ordered. The Court has also observed that the agreement to sell appears to have arisen from a money transaction. It is evident that there is no finding that the agreement to sell was not genuine. In *Trimbak Narayan Hardas's case (supra)*, the Court has specifically come to a conclusion that the judgment debtor in the aforesaid case, namely Krishnaji Mahadeo Jangil colluded with Babulal Motaji and created an agreement to sell in order to frustrate the decree for recovery of amount passed in favour of Trimbak Narayan Hardas. In that context, the Supreme Court held that once the agreement to sell has not been found genuine, it will not create a charge on the property.

7. With greatest respect, the aforesaid judgment relied upon by the respondent does not lay down that if a decree for recovery of amount is passed in the suit for specific performance, it would result in creating charge. Moreover, the objection petition was filed after availing seven opportunities.

IV. Decision

8. Keeping in view the aforesaid facts and discussion, the present appeal is allowed and the impugned order passed by the First Appellate Court is set aside and that of the Trial Court is restored.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 14, 2025
“DK”

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