

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

ESA-51-2017 (O&M)
Date of decision: 09.01.2025

ATAM VIVIK SINGH & ANR.

..Appellants

Versus

PAL NATH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Sham Lal Saha, Advocate
for Mr. Anil Kumar Garg, Advocate
for respondent.

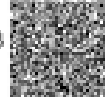
ANIL KSHETARPAL, J(Oral)

1. This execution second appeal has been filed against the order dismissing appellant's objection to the execution of the decree by the Executing Court, which in appeal has been affirmed by the Appellate Court. The objectors are purchasers of the suit property, which was the subject matter of suit for specific performance of agreement in which decree for refund of the amount was passed instead of decree for specific performance. In execution of the aforesaid decree, the suit property on which the charge was created is sought to be sold.

2. Learned counsel for the appellants submits that there is no encumbrance on the suit property.

3. Similar issue has been examined in the following manner in

Civil Revision No.6329 of 2019 and other connected case, titled as Rulia**Singh Vs. Munsha Singh, decided on 03.11.2023:-**



“10. It is evident that as per the proviso attached to Section 60(1)(ccc) of the CPC, it is clearly provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered. However, in the peculiar facts of the present case, the property was specially charged with the debt sought to be recovered because the agreement to mortgage the property was the subject matter of suit for specific performance. Moreover, it is evident from the reading of the agreement and the judgments passed by the Court on 19.08.2014 that not only the residential house but also a shop in front of the house was agreed to be mortgaged. The aforesaid exemption is not applicable to the area of the shop, which is separate. In fact, this aspect of the matter has been clarified by a Full Bench of this Court in **Brij Mohan Lal Vs. Bakshi Ram Etc., AIR 1975 P&H 214.**

11. On a careful reading of the judgment passed in **Amarjit Kaur's case (supra)**, it is evident that in that case agreement to sell was found to be executed for the purpose of security and there was no intention to sell/purchase the house. Moreover, in that case some part of the property was not commercial. Hence, the aforesaid judgment is not applicable.

12. In **Sikandar Singh's case (supra)**, this Court has held that once the suit is not a simple suit for recovery but a suit for specific performance of sale of the house, the exemption under Section 60(1)(ccc) of the CPC cannot be claimed because the property is itself the subject matter of lien or charge as per the terms of the agreement.

13. Similarly, in **Vikram Singh's case (supra)**, the Court has held that once the property is itself the subject matter of the agreement and a decree for specific performance is sought to be executed, the exemption shall not be applicable.

14. Similar view was taken in **Sher Singh's case (supra)**, **Gurdeep Singh's case (supra)**, **Mahender Kumar's case (supra)** and **Gurdarshan Singh's case (supra)**.”

4. Hence, no ground to interfere is made out.
5. Dismissed accordingly.
6. However, if the appellants pay the amount to honour the decree, they shall have liberty to recover the same from judgment debtor(s) in accordance with law.



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

January 09th, 2025

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(ANIL KSHETARPAL)
JUDGE

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