



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

ESA-197-2018 (O&M)
Date of decision: 21.03.2025

SHEESH KHAN

..Appellant

Versus

RASHID AND ANR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goel, Advocate for the appellant.

ANIL KSHETARPAL, J(Oral)

1. Yesterday, the arguments of learned counsel representing the appellant were heard at length and the following order was passed:-

“This execution second appeal has been filed by the decree holder to assail the correctness of concurrent orders passed by the Executing Court, which in appeal has been affirmed by the First Appellate Court. The appellant claims that Sh. Ghanshyam executed an agreement to sell in his favour on 04.06.2001 with respect to land comprised in Rectangle No.57, Khasra No.20 (8-0). The possession of the aforesaid land was delivered to him. He filed suit on 17.08.2005 for specific performance of the agreement to sell claiming to be in possession. The trial Court ordered refund of earnest money, however, the First Appellate Court decreed the suit. Pursuant to the aforesaid decree, sale deed has already been registered in favour of the appellant. He claims to be in continuous possession of the property. Sh. Rashid son of Sh. Gafoor alleges that he purchased 8 kanal and 8 marlas land from Sh. Ghanshyam vide sale deed dated 10.07.2003. He claims that he has been delivered possession of Rectangle No.58, Khasra No.15. Thus, the objection petition filed by Sh. Rashid has been allowed.

Learned counsel for the appellant submits that Sh. Ghanshyam was owner of only 9 kanal and 16 marlas in the khewat. He submits that Sh. Ghanshyam was not competent to sell the property measuring 8 kanal and 8 marlas in favour of Sh. Rashid.

On a Court question, learned counsel for the appellant admits that this aspect has never been taken before the Courts below, however, he prays for some time to verify this fact.

List on 21.03.2025, in the urgent list.”



2. At the outset, learned counsel for the appellant submits that Sh. Rashid son of Sh. Gafoor purchased 8 kanal and not 8 marla land.

3. After verifying the judgments passed by both the Courts below, learned counsel for the appellant does not dispute that his contention has not been taken before the Courts below, however, he submits that he wants to read the objection petition.

4. This Court has considered the submissions of learned counsel for the appellant.

5. In execution second appeal, this Court does not find it appropriate to permit the appellant to take a new argument, which has not been taken before the Courts below. If the appellant had taken some objection, which has not been dealt with, he may file application before the Court below for modifying the order.

6. Even otherwise the Executing Court is not expected to decide 'whether Sh. Ghanshyam sold more than his share or not?' that can be only subject matter of a separate suit or a suit for partition.

7. Learned counsel for the appellant further submits that the objection petition filed by Sh. Rashid has been allowed.

8. It may noted here that the observations made by the Executing Court with regard to sale in favour of Sh. Rashid being bonafide shall not be construed as the final expression on the merits of the case.

9. With the observations, the present appeal is disposed of.

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

March 21st, 2025

Ayub

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*

(ANIL KSHETARPAL)
JUDGE