

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1855 of 2020 (O&M)
Date of decision: 20.03.2020

Neeraj Kumar Sharma ... Petitioner

Versus

Smt. Nirmal Kaur Gill and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Aayush Gupta, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against orders dated 03.03.2020 (Annexure P4) and 16.03.2020 (Annexure P5) passed by the Civil Judge (Jr. Div.), Ludhiana whereby objections filed by the petitioner in execution No.36257 of 2013 have been dismissed and the Local Commission was appointed to execute and register the sale deed on behalf of JD Sangeeta Dhir in favour of Nirmal Kaur Gill, decree holder.

Ms. Nirmal Kaur Gill filed suit for possession by way of specific performance of agreement to sell dated 14.06.2004 in respect of double storeyed House No.62-H measuring 100 sq. yards situated in village Sunet, abadi Shaheed Bhagat Singh Nagar, Ludhiana against Smt. Sangeeta Dhir and Jasbir Singh in January, 2005, decided on 10.02.2011. In the said suit, the plaintiff also challenged sale deed dated 28.12.2004 executed by Smt. Sangeeta Dhir in favour of Jasbir Singh defendant No.2 therein. On

the basis of decree dated 10.02.2011, Ms. Nirmal Kaur Gill filed execution No.36257 of 2013. The present petitioner filed objections (Annexure P2). He has alleged that Sangeeta Dhir never executed the alleged agreement dated 14.06.2004 in favour of the plaintiff/decree holder. After decree dated 10.02.2011 was passed, the decree holder did not make any effort to get the same recorded/incorporated in the revenue records. Sangeeta Dhir sold the suit property to Jasbir Singh vide sale deed dated 28.12.2004 and delivered possession thereof to the vendee. Jasbir Singh sold the property to Smt. Manjit Kaur vide sale deed dated 17.08.2006. Manjit Kaur through Paramjit Singh her general power of attorney sold the suit house to Jagjit Singh and Harpreet Singh sons of late Satnam Singh vide sale deed dated 14.11.2008. Jagjit Singh and Harpreet Singh were in possession of the suit house and they sold the disputed property to the petitioner vide vasika No.6496 dated 13.11.2014 for Rs.35 lakhs.

Counsel for the petitioner would argue that the executing Court dismissed the objections without framing issue(s). It is argued that since the petitioner raised the plea that suit has been decreed by playing fraud with the Court on the basis of forged and fabricated agreement to sell and concealment of material facts and mis-representation, the executing Court was required to frame a specific issue on the question of fraud and decide the controversy after permitting the petitioner to adduce evidence. It is further argued that huge loss would be caused to the petitioner in case he is dispossessed of the suit house. Counsel made a mercy plea that as the

petitioner has a child with special requirements, dispossession from the house would be of serious consequence for his family including that special child.

To bring home his contention with regard to decree being the result of fraud, counsel has made a vain attempt to argue that alleged signatures of Sangeeta Dhir on the agreement dated 14.06.2004 do not tally with her signatures on sale deed dated 28.12.2004 executed in favour of Jasbir Singh, copies whereof are appended with the petition.

I have heard counsel for the petitioner, perused the paper book particularly various annexures appended with the petition but find that the petition is devoid of merit and deserves to be dismissed.

The petitioner is a purchaser of the suit property under a sale deed executed even after the decree dated 10.02.2011 had been passed by the trial Court accepting claim of the decree holder for specific performance of agreement to sell dated 14.06.2004 while setting aside sale deed dated 28.12.2004 executed by Smt. Sangeeta Dhir in favour of Sh. Jasbir Singh. The contentions sought to be raised by the petitioner with regard to difference in signatures of Sangeeta Dhir on the agreement and sale deed aforesaid, at best, could be a defence plea to be raised by Smt. Sangeeta Dhir or Jasbir Singh. The disputed questions of fact that can be raised before the trial Court cannot be allowed to be raised in an execution application as the executing Court cannot go beyond the decree passed by the trial Court. If such a recourse is allowed to be adopted, there would not

be end to the litigation and the successful decree holder may have to face wrath of objections raised by the Jd or people claiming rights on the basis of subsequent purchase. This apart, the principle of *res judicata* may also lose its relevance if such like pleas are allowed to be raised before the executing Court. Furthermore, even a subsequent purchaser may not be entitled to raise a plea challenging correctness of the agreement of sale of which specific performance has been sought, petitioner being the purchaser after passing of the decree possibly cannot raise any such plea. It is otherwise not open for the petitioner to raise contention of difference of signatures on the agreement and sale deed as the agreement bears signatures in Punjabi whereas the sale deed bears signatures of Sangeeta Dhir in English. Analysed from any angle, contention raised by the petitioner that the executing Court was required to frame an issue or provide an opportunity to lead evidence is patently misconceived and has rightly been rejected by the Court.

So far as plea of the petitioner that his dispossession from the suit house would be of adverse consequence, the petitioner cannot be allowed to retain possession of the suit property unless his contention raised in the objection petition is found to be meritorious. If the petitioner is allowed to retain possession, it would be of serious consequence for the decree holder who remained successful in the litigation and decree was passed in his favour in the year 2011 in a suit filed in the year 2005 despite the fact that defendants therein were ex parte before the trial Court. In view

of the above, there is no justification for interference in exercise of extraordinary jurisdiction of the Court.

Dismissed.

20.03.2020

ashok

**(REKHA MITTAL)
JUDGE**

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