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Court : Punjab and Haryana

Decided On : Apr-09-2003

Reported in : (2003)135PLR321

Judge : Jasbir Singh, J.

Acts : [Specific Relief Act, 1963](#) - Sections 28; [Transfer of Property Act , 1882](#) - Sections 53

Appeal No. : Civil Revision No. 740 of 1992

Appellant : Siri Ram

Respondent : Parma Devi Alias Paramjit Kaur and ors.

Advocate for Pet/Ap. : G.S. Jaswal, Adv.

Disposition : Petition dismissed

Judgement :

Jasbir Singh, J.

1. The revision petition has been filed against an order, vide which application filed by the respondent Nos. 1 to 4, under Section 28(2)(a) and (b) of [Specific Relief Act, 1963](#), was allowed and the applicants were held entitled to restoration of possession of the suit property and they were also held entitled to retain amount of

earnest money of Rs.1500/-, by way of compensation towards rents and profits of suit property.

2. It is apparent from the records that Siri Ram, petitioner filed a suit for specific performance, on the basis of an agreement to sell dated 21st September, 1980. That suit was instituted on 20th July, 1981 against the, respondents. Suit was decreed by the trial Court, vide judgment and decree dated 15th February, 1984 and the following relief was granted in favour of the petitioner:-

'23. In view of the above discussion and my findings on the above issues, plaintiff succeeds. I, therefore, grant a decree for specific performance of agreement Ex.P1 dated 21st September, 1980 directing the defendants to execute and get the sale deed registered in respect of suit land in favour of the plaintiff. As a consequential relief, a decree for permanent injunction is also granted restraining the defendants from alienating the suit land in any manner whatsoever to any other person except the plaintiff or from dispossessing the plaintiff from the decree against the defendants, with costs. This decree shall be treated as ex parte against defendant Nos.2 and 3. Plaintiff Siri Ram shall deposit Rs.500/-, the balance sale price of the plot in dispute, for payment to the defendants, within one month from today and thereafter the defendants shall execute the sale deed and get it registered in favour of plaintiff within another one month. Decree be drawn. File be consigned.'

3. As is apparent from the relief given above, it was incumbent upon the petitioner to deposit Rs.500/- i.e. balance price of the plot, in dispute, within one month from the date of passing that judgment. Against judgment dated 15th February, 1984, respondents filed an appeal wherein interim stay was granted. However, ultimately that appeal was dismissed by the appellate Court below on 20th November, 1986. Against above mentioned judgments, Regular Second Appeal bearing No. 1218 of 1987 was filed in this Court, which was admitted on 6th August, 1987. No stay was granted. However, subsequent thereto, appeal was got dismissed as withdrawn, vide order dated 19th November, 1991. It is apparent from the records that even after dismissal of appeal by the appellate Court below on 20th November, 1986, petitioner failed to deposit the amount within one month, thereafter, as directed by

the trial Court. Remaining sale consideration of Rs.500/- was deposited by the petitioner with permission of the Court on 7th December, 1987. In the meantime, petitioner filed execution application, on the basis of judgment passed in his favour on 15th February, 1984. In that execution application, objection petition was filed by the respondents, by stating that execution application is not maintainable, as the decree had become void and inexecutable since the petitioner/deGREE holder had failed to deposit the amount of Rs.500/- within one month from the date of judgment and decree dated 15th February, 1984 onwards. Executing Court below, after noticing contentions of both the parties, allowed the objection application. It was opined by the Court below that keeping in view facts and circumstances of the case, agreement, on the basis of which decree was passed, be held to have been rescinded under Section 28 of the [Specific Relief Act, 1963](#). Relevant part of the order dated 12th December, 1987 reads as under:-

'A perusal of the relief clause shows that the plaintiff was bound to deposit the balance sale price i.e. Rs.500/- within one month from the passing of the decree i.e. 15th February, 1984 but he did not. The amount of Rs. 500/- has been deposited by him on 9th December, 1987 i.e. against the terms and conditions of the judgment in his favour. No reason has been assigned and no explanation has been adduced for non-depositing of the amount of Rs.500/- as per direction of the Court. In such a situation, there is no other inference than the one that the decree holder was not willing to get the sale deed registered. In other words, it is a fit case where in the circumstances the contract i.e. agreement on the basis of which decree was passed be held to be rescinded under Section 28 of the [Specific Relief Act, 1963](#). The order is made accordingly and the objection petition is accepted. On the other hand the execution application moved by the decree holder is dismissed as not maintainable as the contract forming the basis of the decree stands rescinded. File be consigned.'

4. Concededly, no appeal revision was filed by the petitioner against the order dated 12th December, 1987 (Ex.A2) and as such, it has become final between the parties. By placing reliance upon order dated 12th December, 1987 and other facts of the case, Court below, ordered restoration of possession by taking recourse to the provisions of Section 28 of the Specific Relief Act.

5. Shri G.S. Jaswal, Advocate appearing on behalf of the petitioner, has vehemently contended that once, he has deposited the amount, as directed by the trial Court, vide judgment and decree dated 15th February, 1984, agreement to sell cannot be deemed to have been rescinded, as has been opined by the Court below. He further argued that in the alternative, petitioner was entitled to take benefit of the provisions of Section 53-A of the Transfer of Property Act, 1882. He prayed that the revision petition be allowed and the order under challenge be set aside.

6. Having heard counsel for the petitioner, this Court is of the opinion that present revision petition is totally mis-conceived one. It is only an attempt by the petitioner to retain possession of the property regarding which, matter had already become final between the parties, when objection application filed by the respondent was allowed by the Court below, vide order dated 12th December, 1987. Vide that order it was specifically held that since petitioner had failed to deposit Rs.500/-, as directed by the trial Court, as such, he was not willing to get the sale deed registered. It was also observed by the Court below that agreement, on the basis of which decree was passed, be held to have been rescinded, under the provisions of Section 28 of the Specific Relief Act. Execution application filed by the petitioner was dismissed. It is apparent from the records that the order dated 12th December, 1987 was never challenged and as such had attained finality between the parties. Now it is not open to the petitioner to return back and agitate the order of restoration of possession on the same ground on which he had already failed in the year 1987.

7. Further contention of Shri Jaswal that the petitioner is entitled to take benefit of the provisions of Section 53(c) of Transfer of Properties Act, is also not justified. Once, contract/agreement to sell was declared to have been rescinded by the Court, then vender is entitled to restoration of possession, which was obtained by the purchaser under that agreement. Keeping in view facts and circumstances of this case, trial Court has rightly held that the petitioner/decreed holder is not protected under Section 53(a) of the Transfer of Property Act.

8. Counsel for the petitioner has failed to cite any precedent to the contrary, on the basis of which, any interference can be made by this Court, while exercising its limited revisional jurisdiction.

9. No other argument was raised. 10. In view of reasoning given above, this revision petition fails and is accordingly dismissed.

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