

(2015) 05 P&H CK 0452

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2402 of 2015 (O and M)

Jalandhar Improvement Trust

APPELLANT

Vs

Charanjit Singh and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 179 PLR 291

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashok Kumar Bazaz, for the Appellant

Final Decision : Dismissed

Judgement

Rajesh Bindal, J—The judgment debtor has filed the present petition impugning the order dated 27.1.2015 passed by the learned court below whereby the objections filed by the petitioner in execution of the decree dated 4.10.2007 filed by respondent Nos. 1 and 2, were dismissed. It is a case in which the suit filed by respondent Nos. 1 and 2/plaintiffs for declaration was decreed on 4.10.2007 to the extent that the petitioner shall pay a sum of Rs. 15,56,010/- to the decree holders subject to the decree-holders relinquishing their rights in the property within one month. The petitioner was not aggrieved against the judgment and decree of the Court below, however, in appeal filed by respondent Nos. 1 and 2, the decree was modified vide order dated 21.10.2010 to the extent that respondent Nos. 1 and 2 were held entitled to interest @ 12% per annum from the date of deposit till its refund. It is in the execution of the decree dated 4.10.2007, that the objections were filed by the petitioner, which were dismissed vide impugned order dated 27.1.2015.

2. Learned counsel for the petitioner submitted that the decree passed by the trial court was conditional. It was mentioned therein that the suit for recovery was decreed for payment of amount mentioned therein, however, to claim the amount, the plaintiffs/decreed-holders were to relinquish their rights in the plot

within a period of one month from the date of the decree i.e. 4.10.2007.

3. The Appellate Court vide judgment and decree dated 21.10.2010, awarded interest to the decree-holders, however, other conditions laid down in the decree dated 4.10.2007 were upheld. Once the decree holders failed to submit any letter to the petitioner relinquishing their rights in the property, the decree had become un-executable, hence, the objections filed by the petitioner were required to be accepted and the execution should have been dismissed. However, on the status of the plot, which was initially allotted to the decree-holders, counsel was fair enough to state that the allotment made in favour of respondent Nos. 1 and 2/decreed-holders was cancelled even during the pendency of the suit before the trial Court and allotment had been made to some other party on lease for a period of 15 years.

4. After hearing learned counsel for the petitioner, I do not find any merit in the present petition. Primarily issue sought to be raised by the petitioner is that the decree holders having failed to submit a letter relinquishing their rights in the property, the decree passed for recovery of Rs. 15,56,010/- along with interest had become unexecutable. Once the undisputed fact is that allotment made in favour of the decree holders was cancelled in the year 2004 during the pendency of the suit before the trial court, which was decreed on 4.10.2007, and the petitioner had already allotted the plot in question on lease for a period of 15 years on 4.8.2006, nothing hinges on the fact that the decree holders had submitted the letter of relinquishing their rights within one month or not. The aforesaid fact was to be brought on record by the petitioner before the trial court but apparently not done. It is not in dispute that the decree holders had never challenged the cancellation of allotment made in the year 2004. Even this fact apparently was not brought to the notice of the learned Lower Appellate Court. Once the plot, the right in which was to be relinquished by the decree-holders within a period of one month from the date of passing of the decree, had in fact already been allotted by the petitioner to a third party during the pendency of the civil suit, after cancellation of the allotment made in their favour in the year 2004, I do not find that merely because the decree-holders had not submitted any letter regarding relinquishing their rights in the plot, the decree had become unexecutable. There is no merit in the present petition. Accordingly, the same is dismissed.