



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CR-250-2023

Date of decision: 25.03.2025

PAVITTAR SINGH

..Petitioner

Versus

KEWAL SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

Mr. Nitin Sharma, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a judgment debtor. A suit for possession by way of specific performance of agreement to sell was filed by the plaintiff against the petitioner in which alternative relief of recovery of amount was passed. The execution petition filed by the decree holder is pending. The petitioner filed objections on the ground that this is his only residential house in an area measuring 7 marla, which cannot be attached under Section 60(I) (ccc) of the Code of Civil Procedure, 1908.

2. The trial Court dismissed the objection petition.

3. Learned counsel representing the petitioner admits that this Court in **CR-6329-2019, titled as "Rulia Singh Vs. Munsha Singh and connected case", decided on 03.11.2023**, has held that the suit for possession by way of specific performance was with regard to property and hence, there will be charge on the property.

4. The relevant discussion is in the following manner:-



“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)**.”

5. Learned counsel for the petitioner contends that this Court has not considered Section 54 of the Transfer of Property Act, 1882, which specifically provides that the contract of sale would itself not create any interest or charge on such property. He further submits that in **SLP(C) No.27262 of 2019, titled as "Rama Rani Vs. Kanta Rani"**, leave has been



granted by the Supreme Court vide order dated 16.08.2019, which reads as under:-

*“Delay condoned.
Issue Notice.
In the meantime, execution proceedings shall remain stayed.”*

6. This Court has considered the submissions of learned counsel for the petitioner.

7. Section 55(6)(b) specifically provides that a charge is created, if the intended purchaser pursuant to the agreement to sell is held entitled to refund of purchase money paid by him in anticipation of the sale deed.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Dismissed.

March 25th, 2025

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**(ANIL KSHETARPAL)
JUDGE**

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