

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1147 of 2013
Date of decision:12.01.2015

Buta Singh

....Petitioner

Versus

Mohan Lal & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sandeep Jain, Advocate, for the petitioner.

Mr.Puneet Jindal, Sr.Advocate
with Mr.Varun Goyal, Advocate, for the respondents.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition by the objectors is to the orders dated 08.10.2011(Annexure P4), 09.11.2011(Annexure P5) and 17.11.2011 (Annexure P6), passed by the Executing Court, Jalandhar. Vide the said orders, warrant of possession of the northern side of the disputed property as depicted in the site plan has been ordered, for delivery of possession by police help, to the decree holder. By the subsequent order dated 09.11.2011, an application, filed under Order 6 Rule 17 read with Section 152 CPC, of the judgment and decree dated 20.12.2006 (Annexure P1) has also been allowed, for the amendment of plaint, judgment and decree.

The Executing Court has, thus, directed that necessary corrections be made in the said plaint, judgment and decree-sheet and the decree holders had been directed to file correct site plans, as per the orders passed, for execution and warrant of possession was issued for 15.12.2011. Subsequently, by order dated 17.11.2011 (Annexure P6), warrants of possession of half portion or less than half portion of the disputed property, which was found vacant at the spot, which

had been issued, is also subject matter of challenge.

It is not disputed that initially, a suit for possession by specific performance, pertaining to an agreement dated 19.06.2003 was filed by the respondent-Mohan Lal against the defendants-Kusum Lata and her son, Vikram Pal, for the plot measuring 1 kanals 15 marlas, besides one room, bath room with all fixtures and a hand pump in Village Kamam, Tehsil & District Nawanshahr. The boundaries were also mentioned in the head note of the plaint. Objections filed by the present petitioner, on the strength of possession delivered to him on 02.04.2005 by Vikram Pal son of Jagdish and Kusum Lata, were allowed to the extent of half share by the Executing Court on 02.08.2011 (Annexure P3).

Civil revision petitions were preferred by both the parties, the decree holder and the objectors, bearing CR No.5525 of 2011 and CR No.827 of 2013, respectively. This Court directed that the remedy would lie in preferring an appeal against the impugned orders, before the Court of competent jurisdiction, vide order dated 18.09.2013.

It is not in dispute that the appeals are pending before the Lower Appellate Court at Jalandhar against the order dated 02.08.2011. In the meantime, the impugned orders have been passed by the Executing Court whereby certain directions have been given to give possession of certain portion of the property and also amending the plaint, judgment and decree, inspite of the fact that the entitlement has been held to only half share of the decree holder, which is subject matter of appeal. Keeping in view the fact that the matter is still pending before the Lower Appellate Court at Jalandhar, in pursuance of the directions issued by this Court in CR No.5525 of 2011 and CR No.827 of 2013, this Court is of the opinion that the orders passed are not sustainable.

Firstly the matter is still pending consideration, regarding the entitlement of the decree holder and secondly, since the issue of amendment of

the original plaint, if there is any, on account of a clerical mistake, would not lie in the Execution proceedings but an application can only be filed in the proceedings before the Court who had originally passed the judgment and decree.

In such circumstances, this Court is of the opinion that the said orders are liable to be quashed and the same are hereby quashed. Parties are left free to agitate their rights by filing appropriate application in the Court of competent jurisdiction. Needless to say that any observation made herein shall not prejudice the Lower Appellate Court or the Trial Court including the Executing Court in coming to its conclusion, since the observations have been made only for deciding the present revision petition.

Revision petition stands disposed of in the above-stated terms.

12.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE