

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

CR No. 4200 of 2013(O&M)

Date of decision: 01.12.2015

RAVINDER SINGH MEHTA

... Petitioner

versus

MOHINDER KAUR AND ORS

.... Respondent

2. CR No. 2686 of 2014(O&M)

RAVINDER SINGH MEHTA AND ANR.

... Petitioner

versus

KAMINI MEHTA AND ORS

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Divyanshu Mehta, Advocate, for the petitioner.

Mr. Jagdeep Singh, Advocate
for respondent Nos. 1 & 2 in CR No. 4200 of 2013 and
for respondent Nos. 5 & 6 in CR No. 2686 of 2014.

Mr. Aakash Singla, Advocate for
respondent Nos. 1 to 4 in CR No. 2686 of 2014

Mr. R.L. Sharma, Advocate for
respondent Nos. 12 to 16.

K.Kannan, J.

CM No. 24954-CII-2015

CM is allowed.

Legal representative of petitioner No.1 is taken on record.

CR Nos. 4200 of 2013 and 2686 of 2014

The fanciful objection taken by the judgment debtor was that the suit for partition did not contain the relief of separate possession and consequently the defendant who has no possession of

the property as a tenant beyond the period of tenure of lease cannot be disturbed in purported execution of the decree. The partition involved an identification of separate property for allotment and the prayer in the suit must be understood as implying the prospect of delivery of possession of property in the manner that is directed through the final decree. If there is omission to refer to the property to be put in possession of the parties pursuant to final decree or lack of reference to ejectment of person in possession, it cannot be used as a ground by any person in possession and who as a party to the decree to contend that possession cannot be given.

The objection is on the basis that the court has not considered the defendant-objector's right as a tenant and therefore even if the Court was allowing for delivery it could have recorded only a notional delivery without defeating the tenant's right in the property. The protection which is available to the tenant in execution proceedings against the judgment debtor when a tenant is not a party and allowing for a decree holder or a Court auction purchaser to take decision subject to the tenant's right cannot be used in a situation where the tenant was made a party and the tenant had not pressed for an adjudication for his right to hold possession of the property unhindered by a decree for partition. Admittedly, in this case the defendant who claims to be a tenant did not claim for such adjudication and the protection such as what is possible in a situation akin to Order 21 Rule 96 CPC cannot apply.

There is a further contention that the decree itself has not been properly provided of adequate stamps and the decree is unenforceable. I have seen through the copy of the final decree drawn up. It has been drawn on Rs. 300/- non-judicial stamps which I believe would be on the basis of the value of the share which one single largest

shareholder could have claimed but by applying the value to be reckoned on the basis of revenue payable in the manner permitted by a State amendment to the Stamp Law. I will not allow for any objection regarding the adequacy of stamp to be brought at the instance of the judgment debtor and it ought to be confined as an issue merely between the Court and the party. I have seen that the decree is drawn up on non-judicial stamps, I take them at its face value as correct and will not detain myself on the adequacy of the stamp on the objection taken by the judgment debtor. There is however an argument that the extent of properties have not been properly mentioned and there are serious mistakes. A fresh suit for reopening the partitions has been filed and the same is pending. The execution of the decree pending adjudication for reopening the matter will cause great hardship. This objection is also frivolous for there could be no general bar against institution of any suit and if we must understand the realities of how the decree could be stultified by recalcitrant judgment debtor, the curtains would never be downed. The pendency of his own suit may take several more years and it is anybody's guess of what its merits are in such a suit.

There is no merit in the civil revision petitions and are dismissed with costs assessed at Rs. 3,500/- in each of the revision petition against the respondents.

(K.KANNAN)
JUDGE

01.12.2015

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