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

CR No.4098 of 2014 (O&M)

Date of decision: March 17, 2015

Smt. Rakesh and another

.....Petitioners

Versus

Jasbir Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. H.P.S. Ghuman, Advocate
for the petitioners.

Mr. Atul Kshetarpal, Senior Advocate with
Mr. Sandeep Bansal, Advocate
for the respondents.

SABINA, J

Petitioners have filed this petition challenging the order dated 03.02.2014, whereby objection petition filed by the petitioners, was dismissed.

Learned counsel for the petitioners has submitted that the executing Court had erred in dismissing the objection petition moved by the petitioner. Infact, the land in question had not been partitioned so far and was jointly owned by the co-sharers. Therefore, only symbolic possession could have been given to the decree-holder and he could not be said to be in possession of the specific killa numbers as mentioned in the agreement to sell in question.

Learned Senior counsel for the decree-holder, on the other hand has submitted that the decree had been

specifically passed in favour of the decree-holder that the judgment-debtor shall hand over the possession of specific killa numbers to the decree-holder as mentioned in agreement to sell Exhibit P-4. Hence, the executing Court had rightly dismissed the objection petition filed by the petitioners, who had purchased the land from other co-sharers.

Respondent No.1-decree-holder-Jasbir Singh had filed suit against Harbans Lal for specific performance of agreement to sell dated 07.09.2007. The said suit was decreed by the trial Court vide judgment/decreed dated 17.09.2010. The said decree reads as under:-

“It is ordered that the suit of the plaintiffs for possession by way of specific performance of agreement to sell succeeds and the same is hereby decreed with costs to the effect that defendant is directed to execute the registered sale deed in favour of the plaintiff as per agreement to sell dated 07.09.2007 within two months from the date of passing of this judgment and further will deliver the possession of specific killa numbers as mentioned in agreement to sell Ex.P-4, failing which plaintiff will be at liberty to get the same executed as per law.”

It appears that the said decree was passed by the Court consciously as in Para-16 of the judgment passed by the trial Court dated 17.09.2010, it has been specifically held that respondent No.2 was in possession of the killa numbers in question. Para-16 of the judgment reads as under:-

“16. In this view of matter even the defendant's own witness DW.2 Sita Ram admitted that khasra number 7/1 is also not in his possession, rather it is in possession of his brother, the defendant Harbans Lal. Thus even if in the khasra girdawari entry killa no.7/1 of rect. No.46 is not recorded in the possession of defendant, even then actually it is the defendant, who is in possession of the same and defendant is also in specific possession of killa no.6 of rect. No.7/1 and killa no.10 of rect. No.46. Had there been a ring of truth in assertion of defendant that killa no.10 of rect. No.47 is in possession of his brother Inder Pal, then he was not precluded to produce him in the witness box. It is quite evident on the file that by way of entry in the agreement to sell Ex.P4, defendant agreed to sell his 1/8th share measuring 19K-6M being 1/8th share out of total land measuring 154K-15M as it is further evident from the jamabandi entry Ex.P1 that the land is still joint. There is no reference in the jamabandi entry that co-sharer were in specific possession by way of some writing. That partition was never brought to the notice of revenue officer for its reflection in the revenue record. But at any rate all the co-sharers including the defendant are continuing in specific possession of specific killas out of joint khewat and that was why that defendant agreed to sell Ex.P4 and further agreed to get the sale deed executed of the aforesaid specific number.”

Since the decree had been passed in favour of the decree-holder that defendant Harbans Lal had to hand over the possession of specific killa numbers to him as mentioned in the agreement to sell, after the execution of the sale-deed

in his favour, the executing Court could not go behind the decree and order that the respondent No.1-decree-holder was only entitled to symbolic possession of the property in question.

Hence, impugned order dated 03.02.2014 does not call for any interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

March 17, 2015

m.singh