

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

ESA No.63 of 2014 (O&M)
Date of Decision: 08.01.2015

Bhaju (deceased) through his LRs and others

. . . . Appellants

Vs.

Hari Singh and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Sanjay Mittal, Advocate,
for the appellants.

RAKESH KUMAR JAIN, J. (ORAL)

CM No.15169-C-2014

Application is allowed as prayed for.

ESA No.63 of 2014 (O&M)

In brief, the appellants filed a suit for declaration and permanent injunction claiming ownership and possession of land measuring 20 kanal 4 marlas on the basis of a sale deed and on one kanal of land on the basis of adverse possession. They also challenged entry in the mutation regarding Khasra No.29/2/1 and prayed for its correction as 29/2/2. The suit was partly decreed by the trial Court on 23.7.2002 for permanent injunction but not for the declaration that they have become the owners of the land measuring one kanal, by way of adverse possession as well. The plaintiffs then filed an appeal which was also partly allowed on 29.3.2006 directing the concerned official to carry out correction in the mutation No.5565 where details of Killa No.85/29/2/1 and Killa No.85/29/2/2 were given, ordering that Killa No.85/29/2/1,

total measuring 20 kanal 4 marla should have been written as 29/2/2 as it is recorded on the front side of the mutation bearing No.5565. Similarly, Killa No.85/29/2/2 should be written as 85/29/2/1, one kanal in the back of the mutation bearing No.5565. As far as the other observations of the trial Court are concerned, it was held that they do not require any interference and were upheld. The plaintiff allegedly filed the execution of the decree in which they had referred to land measuring 20 kanal 4 marla only but later on an application was filed under Order 6 Rule 17 of the CPC for amendment of the execution application which was allowed by the learned Executing Court against which revision was filed by the judgment-debtor which was dismissed by this Court. Consequently amended execution application was filed by the plaintiffs claiming their right over one kanal of land also about which there was no decree by both the Courts below. In this execution, objection was filed by a 3rd party alleging that there is no decree in favour of the plaintiffs in regard to one kanal of land. During the pendency of this execution application, the judgment-debtors alleged to have taken possession over the land in dispute, therefore, the plaintiffs had filed an application for issuance of warrant of possession to recover possession from the judgment-debtors. In these proceedings, the respondent/3rd party filed objections on the ground that the warrant of possession cannot be issued and also for the application for demarcation of Khasra No.283 to ascertain whether the area shown in blue colour is a part of Khasra No.283 or a part of Mustil No.85, Killa No.29/2/1 and 29/2/2. The said application and the objections filed thereto were dismissed by the Executing Court against which they filed the

appeal which has been allowed and hence the present second appeal has been filed.

Learned counsel for the appellants has argued that the appeal against the order passed by the Executing Court dismissing their application for appointment of a local commissioner to demarcate khasra No.283 and application for correction of warrant of possession restricted to 20 kanal 4 marla, as there was no decree of one kanal of land, which has been claimed by the plaintiffs on the basis of adverse possession, was also dismissed.

At the outset, learned counsel for the appellants has submitted that the impugned order was not appealable as it was an application which was decided by the Court below during the pendency of the execution and therefore, it was only an interlocutory order against which the objector had the remedy of revision before this Court. It is also submitted by him that the objectors had no *locus standi* to file the application as they are admitting themselves to be the owners of Khasra No.283 whereas the dispute in this case is with regard to Mustil No.85, Killa No.29/2/1 and 29/2/2.

I have heard learned counsel for the appellants and after perusal of record, am of the considered opinion that there is no merit in the present appeal because the appellants have admittedly not been given the decree by the Courts below in respect of one kanal of land declaring them owners by way of adverse possession. Even otherwise, the Supreme Court has now settled the issue as to whether the plaintiff can file a suit for declaration claiming title over the property on the basis of adverse possession. The reference in this regard could be had to the judgment of the

Supreme Court rendered in the case of **“Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another”** 2013 (4) RCR (Civil) 703.

Admittedly there is no decree in favour of the appellants as far as one kanal of land is concerned. It is now well settled that the Executing Court cannot go behind the decree and once no right has been given to the appellants to claim the said land by virtue of decree, the same cannot be executed. Moreover, it was only a decree for declaration and permanent injunction. Declaratory decrees are never executed as it only declares the pre-existing right of the party and insofar as the injunction decree is concerned it could only be executed under Order 21 Rule 32 of the CPC if it is violated by the defendants. However, in the present case it is not clear as to whether the execution, which has been filed, is under Order 21 Rule 32 of the CPC or Order 21 Rule 11/12 of the CPC. Had it been a decree for possession, of course the appellants could have filed execution to retrieve the possession, however, in the present case when the execution was filed, at that time, the appellants had not lost their possession rather possession was lost by them during the pendency of the execution, therefore, they had filed application for retrieving their possession from the judgment-debtors by filing application for issuance of warrant of possession.

Be that as it may, the fact remains that there is no decree in favour of the appellants in respect of one kanal of land about which they had filed the suit on the ground of adverse possession. Insofar as the maintainability of the appeal is concerned, it is not disputed that if objection had been filed under Order 21 Rule 97 CPC, the decision taken thereon would be

appealable and in the present case also the objections have been raised by the third party under Section 47 of the CPC which has been dismissed by the Executing Court against which the appeal has been preferred for setting aside the order passed on the application for dismissal of appointment of Local Commissioner which otherwise is not revisable before this Court as already settled in many judgments. Therefore, the only remedy left open with the objectors was to file appeal before the first appellate Court.

Lastly, the argument raised by learned counsel for the appellants is with regard to *locus standi* of the objectors. The objectors had filed application that the Court may allow the demarcation of Khasra No.283 as to whether it is part of Khasra No.28/2/1 or 29/2/2 but the said application has been wrongly dismissed by the Executing Court. Meaning thereby, the objectors had claimed that the appellants are trying to take possession over their land on the ground that there is a decree in their favour of one kanal of land by way of adverse possession.

Thus, in these facts and circumstances, I do not find any merit in the present appeal and the same is hereby dismissed.

08.01.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**