

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

**RSA No.460 of 2013 (O&M)
Date of decision: 23.12.2015**

Narayan Dass Saini and another ... Appellants

Vs.

Gopi Chand Saini and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Rakesh Kumar Sharma, Advocate
for the appellants.

Mr. Harsh Bungler, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit for declaration with consequential relief of permanent injunction, has been decreed.

Mr. Rakesh Kumar Sharma, learned counsel appearing on behalf of the appellant-defendants submits that previous decree dated 06.01.2001 could have only been executed by filing execution application, but not in the manner and mode by filing a subsequent suit. The respondent-plaintiffs filed a suit for declaration but they had already been declared owners in the previous suit which resulted

into passing of the judgment and decree dated 06.01.2001, thus, the suit, *ex facie*, was not maintainable. This fact has not been noticed by both the Courts below and rather has passed a decree *vis-a-vis* the possession, in essence, directing the defendant-appellants to hand over the possession of the suit property in pursuance to the decree dated 06.01.2001, therefore, there is illegality and perversity in the impugned judgments and decrees of the Courts below, much less, substantial question of law arises for adjudication of the present appeal.

Mr. Harsh Bunger, learned counsel appearing on behalf of the respondent-plaintiffs submits that the aforementioned judgment and decree has been executed as per the order dated 13.01.2014. Copy thereof has been passed during the course of hearing vide which the possession of the property has been sought. Even the application filed under Section 144 of the Code of Civil Procedure by the appellant-defendants/judgment debtors for restoration of the possession itself proved that possession has been handed over to the respondent-plaintiffs, thus, there is no illegality and perversity in the impugned judgments and decrees of the Courts below, much less, no substantial question of law arises for determination of this Court.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

The order dated 13.01.2014 passed in execution application bearing No.21/13.05.2013 reads thus:-

"In the Court of Additional Civil Judge, Sr. Division, Faridabad.

1. Gopi Chand Saini son of late Sh. Budh Ram Saini, Resident of 42/504, R.K. Ashram Marg, Panchquain Road, New Delhi. 2. Vinay Kumar Saini son of Late Dr. R.S.Saini. 3. Mrs. Indira Rani Saini W/o Late Dr. R.S.Saini. 4. Ms. Vandana Saini Daughter of Late Dr. R.S.Saini all residents of House No.285, Sector 14, Gurgaon, Haryana. 5. Deepak Saini son of Late Sh. Chiranji Lal Saini. 6. Smt. Nirmala Saini w/o Late Sh. Chiranji Lal Saini. 7. Ms. Indu Saini d/o late Sh. Chiranji Lal Saini. 8. Ms. Rama Saini D/o Late Sh. Chiranji Lal Saini. 9. Ms. Renu Saini D/o Late Sh. Chiranji Lal Saini. 10. Ms. Rani Saini D/o Late Sh. Chiranji Lal Saini all residents of H.No.C-6/181, Keshav Puram, Delhi-35.

....Decree Holders/petitioners

vs.

1. Narayan Dass Saini s/o late Sh. Budh Ram Saini 2. Sanjay Saini s/o Sh. Narayan Dass Saini, both residents of house No.131, Ward No.1, Ballabgarh.

...Judgment debtors/respondents

Execution Petition

Present: Sh. T.S.Tomar, Adv. for applicant/JD.

Sh. Sandeep Gosain, Adv. for respondent/DH.

Heard on the application moved by the applicant objectors for restoration of possession. It shall be pertinent to mention that by virtue of present application the judgment debtor is seeking the indulgence of the Court in seeking restoration of the possession on the premise that the decree holder had taken possession of the property from the JD in an illegal manner and has also moved an application under Section 144 CPC for recalling the warrant of possession till the pendency of the regular second appeal in the Hon'ble High Court. A perusal of the case file shows that the possession in the present case has been handed over to the decree holder in light of the orders of the court dated 4.10.2013 which read as under:-

“warrant of possession received back unexecuted with the report of Bailiff that the JD has refused to hand over the possession of the property in question and there are chances of quarrel. He has also reported that the warrant could not be executed without police aid. Heard. In view of report of Bailiff fresh warrant of possession of the suit property be issued in favour of the Decree Holder returnable for 2.12.2013. A copy of this order along with

copy of decree and report of Bailiff be sent to the office of learned Civil Judge (Sr. Division), Faridabad for providing necessary police aid to the Bailiff for executing the warrant. However, it is made clear to the executing official that in case of showing any stay order, the warrant of possession be returned to this Court. Sd/- (Puneet Sehgal) , ACJ (SD) Fbd.4.10.2013.

2. *Once the possession has been taken on the basis of the order of the Court and the JD had failed to show any stay order at the site so the question of restoration of the possession to the JD does not arise once their appeal has been dismissed by the learned first appellate Court. Furthermore copy of orders of Hon'ble High Court regarding pendency of second regular appeal has not been placed on record. This fact also goes against the judgment debtor.*

At this juncture it shall be pertinent to mention that the present execution is based on the judgment and decree dated 8.6.2011 and the operative part of the same reads as under:-

3. *Further the execution has also been rendered satisfied. So the same is dismissed and on 8.6.2011 following order was passed:-*

As a sequel to my findings the suit of the plaintiff stands

decreed. The plaintiffs are held to the owners of the suit property as per the decree of partition dated 6.1.2001. Further, the defendants are directed to hand over vacant possession as per the decree sheet Ex.P2 within one month. Decree sheet be drawn accordingly. File be consigned to record room after due compliance. Sd/- Sundeep Singh, ACJ (SD)/Fbd.8.6.2011.

4. Subsequently the appeal was also dismissed and once the possession has been taken on the basis of the orders of the Court, so before the executing Court the application for restoration of possession is not maintainable in the absence of any order thereto. The possession has been taken on the basis of order of the Court and the attempt of the judgment debtor appears to be a feeble attempt to seek possession which is not permissible. Resultantly the application for seeking possession stands dismissed being misconceived and the present execution also stands dismissed being satisfied. File be consigned to records.”

Learned counsel appearing on behalf of the appellant-defendants submits that he was not aware of this order as his clients have not passed on the same to him. Reading of the aforementioned order reveals that the respondent-plaintiffs have been able to take the possession in accordance with law, in essence, the previous

judgment and decree dated 06.01.2001 has been executed in law and spirit.

In view of the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 23, 2015
savita