

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1233 of 2016
Date of decision : March 1, 2016

Pawan Kumar and others

..... Petitioners

Versus

Smt. Kamla and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harkesh Manuja , Advocate
for the petitioners.

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

Amit Rawal, J (oral).

The petitioners are aggrieved of the order dated 7.11.2015 whereby execution application filed by respondent-decree holder has been disposed of being satisfied, ignoring the objections raised by the petitioner.

Learned counsel for the petitioners-judgment debtors submits that the decree of preemption contained element of symbolic possession as the respondents-plaintiffs had become owners of 31/52 share. In essence, symbolic possession was to be reflected in the revenue record. However, the trial court issued a warrant of possession and that order was assailed by filing the civil revision bearing No. 5585 of 2015. This Court on 22.9.2015 passed the following order:-

“ Impugned in the present revision is the order dated 13.7.2015 (Annexure-P-12), passed by the learned Civil Judge (Senior Division), Panipat, vide which the objections filed by the revisionists/judgment debtors No. 1 to 3, were dismissed.

Learned counsel for the revisionists/JDs contends that as per the decree passed by the lower Court, which was affirmed upto the Hon'ble Supreme Court, decree for possession of 10 kanals 2 marlas being 31/52 share was passed. Now, the trial Court has issued warrants of possession, which would mean that the actual possession is to be delivered and that the same is not in conformity of the decree. The learned counsel has also placed on file the copy of the warrants of possession (Annexure-P-9), which mentions that the decree-holder is to be put in possession of the property mentioned in the decree sheet. The learned counsel further contends that even police help has been sought, which is not necessary, if the possession of the share is only to be delivered.

It being so, the lower Court is directed to recall the said warrants of possession and draw the same in terms of the decree passed. Needless to say that the warrants in the present form will not be executable.

The present revision is accordingly disposed of.”

The trial court rectified its mistake, which is reflected in the order dated 19.10.2015. The operative portion of the same reads thus:-

“Case file perused. The Hon'ble Punjab and Haryana High Court vide order dated 22.9.2015 directed the Court to recall the warrants of possession and to draw the

warrants of possession in terms of decree passed. As far as the decree passed in favour of decree holders is concerned, a decree of possession of land measuring 10 Kanals 2 Marlas, being 31/52 shares, was passed in favour of decree holders. It is clear that the possession of 31/52 share of the above said land is to be given to the decree holders symbolically rather than actually. It is submitted by the learned advocate for decree holders that the decree holders were owners of 16/52 shares previously. It is evident that by virtue of decree, the decree holders have become owners of the suit property to the extent of 47/52 shares. The Revenue Authorities are to deliver the possession of land measuring 31/52 shares to the decree holders symbolically and by correcting the revenue record in their favour. The Hon'ble Punjab and Haryana High Court held in Kashmir Singh Vs. Tana and others 2000 (4)RCR Civil 6, that where a decree for joint possession is under execution, actual possession can be taken by the decree holder only by way of partition in accordance with law. It is held that only warrants for symbolic possession can be issued in a decree for joint possession. In the present case also, the Revenue Authorities are to deliver the symbolic possession of land measuring 31/52 shares to the decree holders by correcting the revenue record in their favour. The actual possession of land measuring 31/52 shares can be claimed by the decree holders only by way of partition in accordance with law. The application filed by judgment debtors for recalling the warrants of possession is without any merit and the same is dismissed. Warrants of possession already issued by awaited for 30.10.2015 the date already fixed.”

Though, the trial court heard arguments viz-a-viz

error in the execution of decree but consigned the execution petition to record room.

I have heard learned counsel for the petitioners, appraised the paper book and of the view that in the absence of any application, the trial court could not ponder upon the grievance of the petitioner until and unless such grievance is not raised. The trial court could not understand the intricacies and consequential effect of the execution of the judgment and decree sought at the instance of the respondents-plaintiffs.

The petitioners are at liberty to move an appropriate application before the executing court, in this regard. On filing of the application, the trial court shall decide the same in accordance with law after hearing the arguments and decide the controversy/grievance purported to be raised preferably within a period of three months from the date of receipt of application.

The revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

March 1 , 2016
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