

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

**CR No.4880 of 2013(O&M)**

**Date of decision: 21.10.2016**

Baba Budha Dal Chela Baba Chet Singh ....Petitioner

## VERSUS

Samadh Baba Ram Kishan Dass and another .....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Jasbir Rattan, Advocate and  
Mr. Raveesh Sheokand, Advocate for the appellant.

Mr. J.S. Virk, Advocate for respondent No.1.

Mr. B.S. Sra, Additional A.G. Punjab.

REKHA MITTAL, J.

The present petition directs challenge against the order dated 15.09.2012 (Annexure P-12) whereby application filed by the petitioner under Order 21 Rule 32 read with Section 151 of the Code of Civil Procedure, 1908 (in short ‘CPC’) has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for permanent injunction restraining the respondent from interfering or taking forcible possession of land measuring 62 kanals situated in village Nial Tehsil Samana, District Patiala, as per Jamabandi for the year 1997-98, detailed in the decree-sheet (Annexure P-2). The suit was decreed by the trial Court vide judgment and decree dated 26.10.2002 (Annexure P-1). The appeal preferred by the respondent against the aforesaid judgment and decree came to be dismissed by the Additional District Judge Patiala vide judgment dated 22.07.2003 (Annexure P-3). The Regular Second Appeal (in short 'RSA') No.5046 of 2003 filed by the

respondent also remained unsuccessful vide decision dated 19.07.2007 (Annexure P-5). It is further argued that the respondent filed a separate suit for possession qua the aforesaid land in which Parkash Muni and Gurcharan Muni were arrayed as defendants and the suit was decree ex parte vide judgment and decree dated 28.09.1999. In pursuance of the judgment and decree passed in the suit for possession in which the petitioner was not impleaded as a party, a false report was prepared showing delivery of possession in favour of the respondent whereas till date the petitioner is in settled possession of the suit property. It is argued with vehemence that the executing Court committed a serious error rather illegality by holding that possession was taken by the respondent in due course of law after obtaining police help as per the order of the Civil Court, no order can be passed against the respondent therein regarding disobedience of the Court's order. It is vehemently argued that as the respondent and Station House Officer, Police Station Patran, District Patiala arrayed as respondent No.2 in the proceeding under Order 21 Rule 32 CPC had violated order of injunction that has attained finality up to the High Court, they are liable to be taken into custody and their property is liable to be attached, as prayed for.

Another submission made by counsel is that as the report with regard to delivery of possession is a paper formality without possession of the land in question being actually delivered to the respondent, the said report dated 04.02.2010 (Annexure P-13) is liable to be set aside so that it does not cause prejudice to rights of the petitioner, in future.

Counsel for the respondent, on the contrary, has supported the impugned order by contending that as possession of land in question was delivered to the respondent in pursuance of the decree dated 28.09.1999,

passed by the Civil Court, the executing Court has rightly dismissed the application filed under Order 21 Rule 32 CPC by holding that possession has been delivered to the respondent by following due process of law and the decree of injunction was granted in favour of the petitioner only against their dispossession except in due course of law.

I have heard counsel for the parties, perused the paper-book and the various annexures appended with the petition.

It is an undisputed position of the case that the litigation initiated by the petitioner by filing a suit for permanent injunction namely civil suit No.65A/2001/24.02.2000 was decided in favour of the petitioner throughout and the matter was finalized by judgment of this Court dated 19.07.2007 passed in RSA No.5046 of 2003. The trial Court decreed the suit and a relevant extract therefrom reads as follows:-

“13. It is hereby ordered that suit of the plaintiff succeeds and same is hereby decreed with costs. The defendant is restrained from interfering in the possession of the plaintiff, over the suit land and to dispossess him there from illegally and forcibly except in due course of law....”

The respondent filed a suit for possession in regard to the land, subject matter of suit for permanent injunction filed by the petitioner that has eventually merged in the judgment passed by this Court in the aforesaid RSA. In the suit for possession namely suit No.83 dated 24.04.1998 that culminated in the judgment and decree dated 28.09.1999 passed by the Civil Judge (Junior Division), Samana, Parkash Muni and Gurcharan Muni sons of Balak Ram alleged chelas of Som Parkash Boriwala were impleaded as defendants. It is an undisputed position of the case that the present petitioner, in whose favour a decree for permanent injunction was passed in the earlier litigation, was not arrayed as defendant in the suit for possession. It is not the plea of the respondent that Parkash

Muni and Gurcharan Muni arrayed as defendants in the said suit had anything to do with the petitioner. The mere fact that the respondent obtained a decree for possession by impleading somebody else as defendants, by no stretch of imagination can be held that the respondent obtained possession of the suit land by following due process of law in order to discard plea of the petitioner at the threshold that the respondent as well as SHO Police Station Patran are guilty of violating the decree of injunction by invoking the provisions of Order 21 Rule 32 CPC. The executing Court has committed a gross error rather absurdity by holding that possession was taken by the respondent in due course of law and the same does not amount to violation of the decree of injunction passed in favour of the petitioner.

In view of the above, the findings recorded by the executing Court in para 14 of the impugned order cannot be allowed to sustain and accordingly set aside. However, the matter is remitted to the executing Court for decision of the application afresh, including the question of limitation, after hearing the parties in accordance with law. The parties through their counsel are directed to appear before the executing Court on 29.11.2016. The executing Court is directed to decide the matter within a period of three months from the date of parties putting in appearance.

**OCTOBER 21<sup>st</sup>, 2016**

‘D. Gulati’

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no