

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 6225 of 2015 (O&M)
Date of decision : April 26, 2016

Jaswinder Singh,

..... Petitioner

v.

Avtar Singh and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.K Chopra, Sr. Advocate
with Mr. Akshit Chaudhary, Advocate
for the petitioner.

None for respondents No.1 to 3.

Mr. Rakesh Gupta, Advocate
for respondent No.4.

- 1. Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J (Oral)

This petition has been filed against the order dated 11.12.2014 passed by the executing Court directing that respondent Nos.1 to 3 (tenants) would be liable to hand over joint possession to the petitioner and respondent No.4.

Brief facts are that admitted owner of the property was Uttam

Singh who had filed the instant petition for eviction against respondents No.1 to 3. During the pendency of the petition, he died and the petitioner moved an application for being impleaded as LR on the ground that he was the grand son and had a registered Will in his favour. He was so impleaded as LR. Ultimately, the eviction petition was allowed and respondents No.1 to 3 were ordered to be evicted. They filed an appeal before the Appellate Authority. During that appeal, respondent No.4 filed an application for being impleaded as LR on the ground that he, along with some other persons, was Class I heir of deceased Uttam Singh and he along with one of those persons had filed a civil suit for declaration (for their own benefit as well as for the benefit of other LRs) for declaration that they were the only LRs of Uttam Singh and that the Will being propounded by the petitioner was a fake document and that the petitioner had no relation with the deceased-Uttam Singh. The application for impleadment having been dismissed, the matter was carried to this Court and here respondent No.4 was ordered to be impleaded as LR. When the matter was sent back to the Appellate Authority, it, by way of abundant caution, impleaded all the other Class I heirs of Uttam Singh also as LRs.

In the suit filed by respondent No.4, an issue arose as to whether he was liable to pay advalorem Court fees. He took the specific plea that he was not seeking possession and was only seeking a declaration and if the declaration was granted in his favour he would seek possession in due course by filing a separate suit. Admittedly, those proceedings are now pending in this Court (the suit of respondent No.4 having been dismissed by the Courts below on the ground that he had not filed the requisite Court

fees).

It is against this background that learned counsel for the petitioner has argued that once respondent No.4 had himself eschewed his right to claim possession leaving it for a subsequent civil suit, he could not now claim that possession be handed over to him in execution of the decree.

Learned counsel for respondent No.4, on the other hand, has argued that non seeking of relief of possession was limited only for the purpose of that suit and cannot be held to be extended to the present proceedings because he is also the LR of the original owner, and to that extent, a joint decree holder.

In my considered opinion, the key determinant in this case would be the fact that respondent No.4 had consciously given up the claim of possession in a civil suit. Even if his appeal is now allowed in this Court, as claimed by him, and a declaration is issued, he on his own showing would have to file a separate suit and, therefore, the situation which exists today is that till that appeal is decided, he is not an owner and, therefore, the net result would be that respondents No.1 to 3 would continue to remain in possession even though they have been ordered to be evicted. Once the civil suit filed by respondent No.4 stands dismissed (for whatever reasons) and till the said dismissal order is set aside by the superior Court, it has to be held that as on date he has no right, title or interest in the property. Of-course, if his appeal is allowed, the matter would immediately take a different turn but as on date, in view of the dismissal of his civil suit and the first appeal, and in view of his own case that he would seek possession subsequently, the executing Court cannot thwart the decree and let the

tenants continue in possession. Resultantly, this petition is allowed, the impugned order is set aside and it is directed that possession be handed over to the petitioner subject to whatever decision is taken by this Court in the Regular Second Appeal.

April 26, 2016
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(AJAY TEWARI)
JUDGE