

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

Decided on: 18.11.2016

1. CR No.6480 of 2016 (O&M)

Kulvinder Kaur		Petitioner
	Versus	
Surinder Tawar and others		Respondents

2. CR No.6525 of 2016 (O&M)

Kulvinder Kaur		Petitioner
	Versus	
Surinder Tawar and others		Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kanwardeep Singh, Advocate
for the petitioner (in both the petitions)

REKHA MITTAL, J.

This order will dispose of CR No.6480 and 6525 of 2016 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from CR No.6480 of 2016.

Counsel for the petitioner has submitted that Dalbir Singh and others filed a suit for declaration with consequential relief of permanent injunction claiming them to be owner in possession of suit property and the suit was filed against Gurbachan Kaur and Gurbinder Kaur (minor). In the said suit, Gurbachan Kaur and Gurbinder Kaur filed a counter-claim for possession of suit land. The suit filed by Dalbir Singh and others and counter-claim preferred by Gurbachan

Kaur and another were ordered to be dismissed by the trial Court vide judgment and decree dated 15.06.2009.

Gurbachan Kaur and Gurvinder Kaur preferred an appeal against the aforesaid judgment and decree and the Court of Additional District Judge, Fast-track Court, Karnal allowed the appeal in respect of counter-claim preferred by Gurbachan Kaur and Gurvinder Kaur vide judgment and decree dated 20.01.2012 (Annexure P6). On the basis of the decree passed by the Court of appeal, an application for execution of the decree was filed by the assignees of the decree-holders. In the execution proceedings, two separate applications were filed by the petitioner one under Order 21 Rule 35 CPC and another for recalling of warrants of possession to be executed with police help. The Executing Court vide impugned order dated 14.09.2016 dismissed both the applications and warrants of possession were ordered to be issued for 28.09.2016.

Counsel for the petitioner has submitted that Kulwinder Kaur and others filed a civil suit against Surinder Tawar and others for declaration that the plaintiffs are owners of 2445/4080 share out of land measuring 204 kanals 4 marlas detailed in para 4 of the plaint and mutation No.990 and 991 are illegal, void, without jurisdiction and nullity. The suit was decreed by the trial Court vide judgment and decree dated 26.04.2016 (Annexure P2). The appeal against the decree is pending. It is argued that as the petitioner is a co-sharer in the land measuring 204 kanals 4 marlas on the basis of judgment and decree dated 26.04.2016, the Executing Court should refrain from getting the

actual physical possession delivered in favour of the decree-holders or their assignees on the basis of judgment and decree dated 20.01.2012. It is further argued that the petitioner has got no objection if the Executing Court executes the warrants of possession only *qua* delivery of symbolic possession because symbolic possession is as effective as actual physical possession. In support of his contentions, he has referred to judgments of this Court ***“Ram Singh vs Gurnam Singh and others”***, 1989(2) PLR 185, ***“Tara Singh and another vs Gurdial Singh and another”***, 1959 AIR (Punjab) 518.

Another submission made by counsel is that an application filed under Order 21 Rule 35(3) CPC can be treated as an application filed under Order 21 Rule 97(1) CPC. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India ***“Bhanwar Lal vs Satyanarain”***, 1995(1) SCC 6. Counsel has also referred to other judgments ***“Mallu vs Ram Chand and others”***, 1973 PLJ 655 (P&H), ***“Milkhi Ram and others vs Raghunandan and others”***, 1982 AIR (HP) 87, ***“M.V.S. Manikayala Rao vs M. Narasimhaswami and others”***, 1966 AIR (SC) 470.

I have heard counsel for the petitioner and perused the paperbook particularly the records.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to mention that an application filed under Order 21 Rule 35 CPC at the behest of the petitioner and challenge to the order passed by the Executing Court on the said application are highly mis-conceived and appears to be the result of gross mis-

appreciation of the provisions of Order 21 Rule 35 CPC.

Order 21 Rule 35 CPC deals with decree for immovable property. A relevant extract therefrom, reads as follows:-

“35. Decree for immovable property- (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.”

A bare reading of the aforesaid extract would make it evident that where a decree is for delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or in other words to the decree-holder by removing any person bound by the decree who refuses to vacate the property. Where the decree is for joint possession of immovable property possession

shall be delivered in the manner prescribed in sub-rule (2) of Rule 35. sub-rule (3) of Rule 35 envisages the procedure to be followed in case the person bound by the decree does not afford free access for the purpose of delivering possession of any building or enclosure to the decree-holder.

On a pointed query raised by the Court, counsel for the petitioner, though has informed that the petitioner is neither the decree-holder nor the judgment-debtor but still persisted that the petitioner can maintain an application under Order 21 Rule 35 CPC. As I have already mentioned hereinbefore, application filed by a third person under Order 21 Rule 35 CPC is not maintainable in the eye of law. Counsel for the petitioner has referred to certain judgments dealing with Order 21 Rule 35 CPC but without appreciating that the judgments deal with right of the decree-holder to seek possession and in case there is any resistance or obstruction in delivery of possession in favour of the decree-holder, an application under Order 21 Rule 35(3) CPC can also be treated as an application under Order 21 Rule 97 CPC. In this view of the matter, I am unable to find any fault in the order impugned whereby prayer of the petitioner for non-issuance of warrants of possession to execute the decree passed by the Civil Judge (Jr. Division), Karnal has been rejected.

The Code of Civil Procedure provides for remedy to a third party by filing objections under Order 21 Rule 58 CPC against attachment of property in execution of a decree whereas a person in possession of the decretal property and claims an independent right,

title or interest in that property in his possession can file objections by invoking the provisions of Order 21 Rule 97 CPC onwards. In the case at hand, no property has been attached by the Executing Court. The Executing Court has issued warrants of possession in order to execute the decree passed in counter-claim preferred by Gurbachan Kaur and Gurvinder Kaur. Perusal of the application filed by the petitioner would make it evident that it is none of the plea of the petitioner that she is in possession of the property in regard whereof warrants of possession were issued by the Executing Court. In para 2 of the application, it is averred that warrants of possession were sent to the *Halqa Kanugo* for compliance, a notice was also given to the alleged purchaser to come present at the time of delivery of possession, there was no obstruction from any party for executing of warrants of possession. It has further been averred that the applicants were entitled to 2496/4080 share out of total land measuring 204 kanals whereas the suit has been partially decreed to the extent 1632/4080 share. The applicants intend to file appeal against the judgment and decree dated 26.04.2016.

As the petitioner does not claim to be in actual possession of land in regard whereof decree of possession has been passed in favour of Gurbachan Kaur and Gurvinder Kaur, she cannot file an objection petition by invoking the provisions of Order 21 Rule 97 CPC onwards. On the contrary, if the petitioner claims to be in possession of land, subject-matter of the decree dated 20.01.2012, she cannot maintain a petition before this Court against dismissal of her application/objections being a third party. Analyzed from any angle, claim raised by the petitioner is untenable and merits rejection at the

threshold.

For the foregoing reasons, the petitions fail and are accordingly dismissed *in limine*. However, the petitioner may take recourse to appropriate remedy under law, if so advised.

18.11.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No