

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

CR No.7287 of 2016(O&M)

Date of decision:23.11.2016

Om Narain and others

....Petitioners

VERSUS

Balwan Singh Gahlawat and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjiv Kumar Aggarwal Advocate for the petitioners.

REKHA MITTAL, J.

The present petition directs challenge against order dated 12.10.2016 (Annexure P-1) passed by the executing Court whereby the objection petition filed by the petitioners has been dismissed.

The sole submission made by counsel for the petitioners is that as the land in dispute was under mortgage with the objectors, they cannot be dispossessed from the suit land in execution of decree for specific performance of agreement to sell passed against Captain Ganpat (since deceased) represented by his LRs Smt. Chander Kanta and others. It is further submitted that even if a decree for redemption of mortgage was passed in favour of Captain Ganpat and against the petitioners way back in the year 1992 affirmed in appeal in October 1992, the petitioners, at best, could be dispossessed in execution of the decree passed in those proceedings but the said decree has been rendered unexecutable being barred by limitation.

I have heard counsel for the petitioners, perused the paper-book particularly various annexures including the impugned order.

Balwant Singh Gahlawat respondent No.1/deGREE holder filed a suit for possession by way of specific performance of agreement to sell dated 12.04.1989 against Captain Ganpat (since deceased) represented by his LRs and Om Narain and others sons of Hari Singh (petitioners herein). The suit was instituted in the year 1996 and the same was decided vide judgment and decree dated 01.04.2006 whereby the decree holder/plaintiff was allowed alternative relief of recovery of Rs.1,82,000/- along with interest at the rate of 12% per annum from 06.06.1990 till realization. The judgment and decree passed by the trial Court became subject matter of two appeals, one filed by Balwan Singh Gahlawat and other by Ranbir Singh and others including the present petitioners. Both the appeals were decided together vide judgment and decree dated 04.06.2011 passed by the Additional District Judge, Rohtak, appeal preferred by the defendants is dismissed but appeal filed by plaintiff was allowed, legal heirs of defendant No.1 were directed to get the sale deed executed of the disputed land in favour of the plaintiff after receipt of balance sale consideration and hand-over possession of land to the plaintiff within two months and if the land has not been got redeemed, the same be got redeemed by legal heirs of defendant No.1. Indisputably, the judgment and decree passed by the appellate Court has attained finality. As the present petitioners were arrayed as defendants in the suit for possession by way of specific performance of the agreement to sell executed by the erstwhile owner and the decree holder has been held entitled to get executed the sale deed and possession of the disputed land with a further direction to the vendor through his LRs to get the land redeemed if not already redeemed, it is difficult to accept contention of the petitioners that they can resist or obstruct execution of the decree qua delivery of possession of suit land in

favour of the decree holder. Any such plea that possession of the suit land cannot be recovered from the petitioners, in the present suit that culminated in the decree passed by the Court of appeal, was a plea to be raised during trial, therefore, such a plea is not open to be raised now before the executing Court as the executing Court cannot go beyond the decree. This apart, as mortgage in favour of the petitioners already stood redeemed way back in the year 1992 and rights of the mortgagor and mortgagees stood determined, the petitioners, at best, can be said to be in unauthorized possession of suit land or sitting there on behalf of the judgment debtor, therefore, they cannot stall the execution proceedings to reach fruition in favour of successful decree holder. Examined from any angle, I do not find any fault in the order impugned warranting intervention.

Before parting with this order, it is pertinent to mention that as defendant No.1 through his LRs and the petitioners filed a joint appeal, it implies that the objections were preferred by the petitioners in connivance with LRs of Captain Ganpat with an intent to delay the execution despite a legal struggle of 20 years by the decree holder.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

NOVEMBER 23, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no