

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

**CR No.8259 of 2015 (O&M)
Date of decision:05.02.2016**

Randhir Singh and another

... Petitioners

Vs.

Makhan Singh (deceased) through LR & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Sarju Puri, Advocate
for the petitioners.

Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for respondent No.1(iii) & respondent No.2.

AMIT RAWAL J. (Oral)

C.M.No.25873-CII-2015

This is an application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure for impleading the LRs of proforma respondent No.4- Ajit Singh.

Since vide order dated 7.1.2016, service on proforma respondents No.3 to 8 has already been dispensed with, therefore, no orders are required to be passed in the aforementioned application for impleading LRs of proforma respondent No.4.

Application is disposed of as rendered infructuous.

CR No.8259 of 2015 (O&M)

The petitioner-judgment debtors are aggrieved of the order dated 30.09.2015 (Annexure P-4), whereby, objection petition seeking execution of the judgment and decree dated 06.09.2003, has been dismissed. The operative part of the decree reads thus:-

“It is ordered that the suit of the plaintiffs is hereby decreed to the effect that they are entitled to get the possession of the property in dispute by means of redemption and payment of mortgaged money within two months to defendants No.1 and 2. Parties are left to bear their own costs as per the suit of their own.”

Mr. Sarju Puri, learned counsel for the petitioner-judgment debtors submits that though petitioners have not filed any appeal but the decree cannot be executed as per the provisions of Order 34 Rule 37 of the Code of Civil Procedure as preliminary decree was required to be drawn and therefore, the execution petition at the instance of the decree holder on deposit of the mortgaged money seeking possession was not maintainable. In support of the aforementioned contention, he relied upon the judgment of this Court in **Sohan Lal (deceased) through his LRs vs. Balbir Singh and others Vol. CLXIX 2013 (1) 608.**

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr.Nitish Garg, Advocate submits that judgment and decree has

attained finality and it is composite decree, therefore, the objection vis-a-vis maintainability of the execution petition in the absence of the final decree, is not sustainable. In support of his aforementioned contention, he relied upon the judgment of this Court in **Sadhu Ram vs. State Bank of India 1994 ISJ (Banking) 434**, as well as, judgment of Allahabad High Court in **Ghulam Ashraf vs. Abdul Khalik and another 2006 AIR (Allahabad) 149** to contend that decree dated 06.09.2003 is composite decree.

I have heard learned counsel for the parties and appraised the paper book, as well as, case law cited by learned counsel for the parties, at bar.

As per the ratio decidendi culled out in the case law cited by Mr. Sarju Puri, as per the decree, it was ex facie preliminary decree, accordingly, decree holder cannot be permitted to seek execution of the decree in the absence of the final decree. Para 8 of the judgment provides that there is no compulsion under the scheme of the Civil Procedure Code or under the substantive provision of the Transfer of Property Act for compelling the party to the two stages of preliminary decree and final decree. There is consequently no bar against a Court from passing even a final decree for redemption if the amount is deposited and no further accounts are required to be drawn out.

In the aforementioned judgment, this Court had observed that if the trial Court had provided for a preliminary decree for

redemption after determining the amount payable and the time before when the amount has to be paid, it cannot be assumed that the Court was passing a final decree. It must be taken as what it did pass.

Be that as it may, decree aforementioned in the cited case was preliminary decree and the amount had not been determined but in the instant case, amount had been deposited and the decree holder had been called upon to pay the same, therefore, passing of composite decree is no res integra and in this regard, I draw support from the ratio decidendi culled out in Sadhu Ram's case (supra). In my view, the objection filed on behalf of the judgment debtor vis-a-vis execution of the decree, aforementioned, is not sustainable and rightly so, has been rejected.

No ground is made out for interference in the impugned order and the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2016
savita