

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

CR No.8392 of 2015(O&M)

Decided on. 18.10.2016.

Birbhan and others

.....Petitioners

Versus

Fateh Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Arun Jain, Sr. Advocate
with Mr. Arnab Sood, Advocate
for the petitioners.

Mr. Anil Kshetarpal, Sr. Advocate
with Mr. Rohit Nagpal, Advocate
for respondent no.1.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 18.09.2015 passed by the learned Additional Civil Judge (Sr. Division), Jind, vide which the objections moved by the petitioners-JD's under Section 47 of the Code of Civil Procedure, 1908 (for short C.P.C) have been dismissed.

2. Petitioners have moved the objections under Section 47 of the CPC for dismissal of the execution petition on the grounds inter alia that no decree has been passed for handing over of the suit land. Decree is only for entitlement of the possession. Even, no specific area has been mentioned. It is further pleaded that the Civil Court has no jurisdiction to entertain the suit for possession of the agriculture land

by the landlord against the tenant. It is further pleaded that the execution petition is not clear as to the factum of possession of the JD's and their respective killa numbers. It is further pleaded that the execution for recovery of mesne profit is also not maintainable as the Civil Court had no jurisdiction to grant the mesne profit in case of agriculture land and, no final decree for mesne profit could be passed under Order 20 Rule 12 CPC. Similarly, no decree for mesne profit could be passed without the enquiry. There is also no calculation of the amount of mesne profit qua JD's.

3. The aforesaid objection petition was contested by DH-respondent no.1 controverting all the pleas raised in the objection petition.

4. I have heard Mr. Arun Jain, Senior Advocate with Mr. Arnav Sood, Advocate, learned counsel for the petitioners, Mr. Anil Kshetarpal, Senior Advocate with Mr. Rohit Nagpal, Advocate, learned counsel for the respondent no.1 and have meticulously gone through the record of the case.

5. Learned counsel for the petitioners argued on the lines mentioned in the objection petition. He contended that the decree passed by the learned trial Court was in-executable as the Civil Court has no jurisdiction to grant the decree for possession with respect to the agriculture land in case of land lord tenant. He further contended that the legal procedure for determination of the *mesne* profit has also not been followed as provided under Order 20 Rule 12 CPC and no final decree has been passed.

6. On the other hand, learned counsel for the respondent no.1

contended that the executing Court has no jurisdiction to go beyond the decree. It was not a case of tenancy of the agriculture land, rather the JD's were in permissive possession of the suit property. The *mesne* profit have also been determined by the learned trial Court on the basis of evidence available on record, which will amount to holding the enquiry. The decree passed by the learned trial Court for recovery of mesne profit is a final decree.

7. I have duly considered the aforesaid contentions.

8. There is no dispute with the proposition of law that the Executing Court cannot go beyond the decree. It is pertinent to mention that the arguments in the present revision petition were heard along with RSA no. 2651 of 2012, which is also being disposed of simultaneously vide separate judgment. In RSA No. 2651 of 2012, learned counsel for the petitioners has also raised the plea regarding the jurisdiction of the Civil Court and illegality in determining the mesne profit and all these issues have been dealt with elaborately in the judgment of RSA No. 2651 of 2012.

9. It will be suffice to mention that it was nobody's case that petitioners-JD's were in possession of the suit land as a tenant or there was any relationship of landlord and tenant between the parties. Rather, the JD's-petitioners were claiming themselves to have become the owner of the suit property on the basis of Will and in the alternative by way of adverse possession and abandonment of title. So, the question of jurisdiction of the Civil Court does not arise.

10. Learned counsel for the petitioners could not show any judicial precedent that it is mandatory to pass the preliminary decree

before passing the decree for mesne profit. The mesne profit has been assessed by the learned trial Court on the basis of the material available on record i.e. the evidence adduced by the parties. Thus, the objection petition moved by the petitioners-JD's was just an attempt to delay the execution proceedings.

11. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

12. Thus, the present revision petition having no merits, is hereby dismissed.

October 18, 2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No