

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

**CR No.8622 of 2016
Decided on: 21.12.2016**

Milkha Singh (deceased) through his LR Surinder Singh and others

....Petitioners

Versus

Mst. Achhari and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Deepak Thapar, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition directs challenge against order dated 21.11.2016 (Annexure P1) passed by the Civil Judge (Jr. Division) Gurdaspur whereby the objections preferred by the petitioners in execution filed by decree-holder Mst. Achhari has been dismissed.

A brief backdrop of the case is that Mst. Achhari filed a suit for possession of land measuring 176 kanals 04 marlas by way of redemption of mortgage and the same was decreed by the Senior Sub-Judge, Gurdaspur vide judgment and decree dated 23.04.1982 in respect of land measuring 77 kanals 10 marlas bearing specific killa numbers, detailed in the decree. The appeal preferred against the decree of the trial Court did not find favour with the Additional District Judge, Gurdaspur whereby the decree passed by the trial Court was affirmed vide judgment and decree dated 18.11.1983. The unsuccessful JDs did not get any favourable order in the regular second appeal filed before the High Court.

The decree-holder filed an application for execution of the

decree seeking recovery of possession of the decretal land. The petitioners filed the objection petition (Annexure P5) that came to be dismissed by the Executing Court vide order impugned.

Counsel for the petitioners has challenged the impugned order primarily on two counts. The first submission made by counsel is that as Mst. Achhari was held to have share only to the extent of 10 kanals 04 marlas by the Court of appeal as well as this Court, she is not entitled to recover possession of the entire land measuring 77 kanals 10 marlas. In addition, it is submitted that as share of the decree-holder in the total land is only to the extent of 10 kanals 04 marlas, it was incumbent for her to obtain a final decree in the present scenario. Further submitted that the Executing Court without appreciating the peculiar facts of the present case has wrongly relied upon the judgments ***“Vankat Reddy vs Pethi Reddy”***, AIR 1963 SC 992 and ***“Gnanmbal Ammal vs Ayya Swami”***, 1995(68) Law Weekly 353.

The second submission made by counsel is that as per the decree passed by the trial Court, the decree-holder was required to deposit the mortgage money of Rs.6,420/- within one month whereas according to the decree passed by the Court of appeal, the same was to be deposited within a period of two months but the decree-holder neither complied with the direction of the trial Court nor of the Court of appeal, therefore, decree has been rendered un-executable.

I have heard counsel for the petitioners, perused the paperbook, various annexures particularly the order impugned.

Perusal of the decree passed by the trial Court would make it evident that it was a composite decree holding in favour of the

decree-holder of her right to redeem the mortgage on deposit of Rs.6,420/- representing mortgage money. The decree passed by the trial Court was affirmed in appeal and it was held in para 10 of the judgment passed by the Additional District Judge, Gurdaspur that Achhari being one of the mortgagors of the suit land, though her share in the mortgage land is only to the extent of 10 kanals 04 marlas, is entitled to get the entire land measuring 77 kanals 10 marlas redeemed on payment of mortgage money of Rs.6,420/-. Indisputably, this finding of the Court of appeal was affirmed in the regular second appeal decided by this Court on 17.11.2011. Taking into consideration the judgment and decree passed by the trial Court that has attained finality upto this Court, I find myself unable to be persuaded by contentions of the petitioners that the decree-holder was required to obtain a final decree merely because she is a co-owner to the extent of 10 kanals 04 marlas out of total mortgaged land measuring 77 kanals 10 marlas more particularly in the circumstances that none of the petitioners claim himself to be a co-owner of the said land. In this view of the matter, there is no merit in contention of the petitioners that the judgments relied upon by the Executing Court are either not attracted in the circumstances of the present case or the Executing Court has committed an error by relying upon the judgments.

So far as plea of the petitioners with regard to deposit of mortgage money, the Executing Court in the concluding para of the impugned order has noticed that the decree-holder has already deposited the amount. Counsel for the petitioners has not disputed that deposit of mortgage money was made by the decree-holder after

seeking necessary permission from the Court. It is un-denied that the order passed by the Court permitting the decree-holder to deposit the mortgage money has not been challenged in appropriate proceedings, therefore, has attained finality. Hon'ble the Supreme Court of India while dealing with liability of a decree-holder to deposit balance sale consideration in a suit for specific performance of agreement to sell has held that the decree passed in such a suit is to be treated as a preliminary decree and the Court does not cease to have jurisdiction to extend the period for deposit of balance sale consideration.

Examined from any angle, I do not find any error much less illegality in the impugned order warranting intervention. Conversely, it appears that as the petitioners are enjoying possession of the land in question in respect whereof the decree-holder is litigating for the past more than three decades, every effort is being made by the petitioners to delay the decree to fructify.

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

21.12.2016
yakub

(REKHA MITTAL)
JUDGE

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