

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

**CR No.1566 of 2017 (O&M).
Date of Decision: 23.03.2017.**

Om Parkash

....Petitioner.

VERSUS

Singh Ram (since deceased) through his legal representative Rajbir
and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Manjeet Singh, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-6486-2017

Allowed, as prayed for.

CR-1566-2017

This revision petition under Article 227 of the Constitution of India is directed against the judgment dated 14.02.2017 passed by learned Additional District Judge, Hisar by virtue of which the appeal filed by the petitioner was dismissed. The order dated 24.07.2015 passed by learned Civil Judge (Junior Division), Hansi dismissing the applications, first for not executing the warrant of possession; and the second for stay of the execution petition, has also been assailed.

The submissions made by Mr. Manjeet Singh, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argues that petitioner had purchased 03 Marlas (100 square yards) of land comprised in Khasra No.543//2/1 min vide registered sale deed No.3105 dated 17.10.2006. In the suit filed by respondent No.1 against respondent No.2, proper description of the suit property was not given. It was not specified by stating the Khasra number/ Khewat number. The petitioner was not a party to that suit and, therefore, the judgment and decree dated 02.06.2004 passed in the suit filed by respondent No.1 is not binding on his rights, but without considering the facts of the case, the Executing Court dismissed his objection petition vide order dated 24.07.2015. He challenged the said order by filing a Civil Revision before this Court, which ultimately was allowed to be withdrawn giving liberty to him (the petitioner) to avail appropriate remedy in accordance with law as an appeal was maintainable against the impugned order.

The petitioner filed Civil Miscellaneous Appeal before Appellate Court, Hisar and also filed an application under Order 1 Rule 10 of the Code of Civil Procedure (for short, 'the Code') for being impleaded as party to the execution application, but his application was dismissed by the Executing Court vide order dated 08.09.2016. The order was challenged before this Court by Civil Revision No.6312 of 2016 but that too was dismissed. The Executing Court then without the consent of the petitioner recorded his statement with regard to a compromise. On a complaint given by him against the Presiding Officer, the execution petition was transferred from his Court to Civil Judge, Hansi and the application filed by the petitioner for staying the execution proceedings till decision of the appeal,

dismissed with direction to the Court to hear the parties and decide the appeal. Learned appellate Court dismissed the appeal with costs of Rs.3000/- vide order dated 14.02.2017. The said order passed by learned appellate Court is illegal, arbitrary and unsustainable under law. Subsequent to that the application filed by the petitioner before the Executing Court praying not to execute the warrant of possession without demarcation of khasra number of the property in question has also been dismissed by learned Executing Court vide the impugned order dated 24.07.2015.

Learned counsel asserts that when the suit property, which is subject matter of judgment and decree passed in favour of respondent No.1, is not identified by Khewat/Khasra number, the warrants of possession as against the property of the petitioner cannot be executed. The fact is that the judgment debtor, against whom the decree was passed, had three plots. The decree holder with malafide intention has illegally given particulars of the property of the petitioner for execution of the decree.

As is clear from the facts narrated by the petitioner himself, he has been adopting one mode after the other to frustrate execution of the judgment and decree dated 02.06.2004 passed in favour of respondent No.1. There was no occasion for the petitioner to be party to the suit since as per his own admission, he purchased the suit property from the judgment debtor vide registered sale deed dated 17.10.2006 i.e. much after the judgment and decree dated 02.06.2004 had been passed in favour of respondent No.1-decree holder. In case the petitioner had purchased the suit property which was subject matter of the suit in which a judgment and decree had already been passed in favour of respondent No.1-decree holder, he did so at his own risk and now he cannot stop the execution of the judgment and decree.

From the impugned order, it transpires that in the judgment and decree dated 02.06.2004 the suit property had been identified by stating the boundaries, directions and the place where it was situated. It has been mentioned by learned Executing Court in the impugned order that alongwith the warrants of possession, copy of the decree as well as the copy of registered sale deed executed in favour of respondent No.1-decree holder in compliance of the judgment and decree dated 02.06.2004 had been attached. Dismissing the Civil Miscellaneous Appeal filed by the petitioner, the findings of learned Additional District Judge are as under:-

“From the facts and circumstances of the case as well as material available on the case file before the learned lower court, it comes that the present execution petition was filed by the decree holder to execute the judgment and decree dated 2.6.2004 and in pursuance of the judgment and decree dated 2.6.2004, the sale deed of the suit land was got executed by the local commissioner and warrant of possession of the suit land was ordered to be issued as is evident from the zimni order dated 4.4.2011. A further perusal of the lower court record shows that earlier also the objections as taken in the application for stay of execution petition were also filed by the objector Om Parkash and same were dismissed by the court of Sh. Satish Kumar, learned Civil Judge (Jr. Divn), Hansi vide order dated 16.11.2012 and appeal against the order dated 16.11.2012 was also dismissed by Sh. Basruddin the then learned Additional District Judge vide judgment dated 13.1.2015. Even the application moved by the appellant under order 1 rule 10 CPC has also been dismissed by learned Civil Judge (Jr.Divn), Hisar vide order dated 8.9.2016. When the objections of the appellant have already been adjudicated and dismissed, the appellant cannot move to the court with such objections and this act of the appellant clearly reveals that by

way of moving such objections, the appellant want to prolong the proceeding of the execution. There is no need to mention particular specification of the suit property in the warrant of possession because warrants of possession has been issued along with the copy of decree and copy of registered sale deed. The contention of the appellant that despite direction, the decree holder failed to deposit the remaining sale consideration is also devoid of merit because as discussed the decree holder is still entitled to recover an amount of Rs.4309/- from the JD. Thus, the learned lower court is perfectly justified in passing the impugned order dated 24.7.2015.”

Learned counsel for the petitioner failed to demonstrate any illegality or perversity in the judgment passed by learned appellate Court. Needless to say that the judgment and decree dated 02.06.2004 passed in due process of law has to be executed and it is the property duly described in the judgment and decree qua which the decree has to be executed. The execution petition was filed by the decree holder in the year 2004 and till date because of the litigation being ensued by the petitioner, the decree remains unexecuted.

There being no merit in the petition, it is dismissed.

(SNEH PRASHAR)
JUDGE

23.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**