

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

C.R. No.1584 of 2017

Date of Decision: 06.03.2017

Om Parkash

....Petitioner

Versus

Vinod Kumar

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vikram Bali, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The petitioner is aggrieved by order dated 22.12.2016 (Annexure P-13) passed by learned Civil Judge (Junior Division), Karnal, whereby, the actual possession has not been delivered to the petitioner, who is a decree holder.

Learned counsel for the petitioner submits that the disputed property was originally owned by one Sushma Mehta. Respondent-Vinod Kumar purchased disputed property by virtue of sale deed dated 21.04.2004 and as such, has become owner of that property. Thereafter, he entered into an agreement to sell with the present petitioner/plaintiff. Respondent-defendant was not executing sale deed and as such, the suit for specific performance was filed, which was decreed on 12.03.2012. As per decree, the defendant was directed to execute the sale deed in favour of plaintiff within a period of two months. The petitioner-plaintiff filed execution petition, wherein, a local commissioner was appointed vide order dated 05.05.2016 to get the sale deed executed as per decree sheet. It was done in consonance with Order 21 Rule 34 CPC. Learned counsel also submits that

the petitioner-plaintiff filed an application for issuance of warrants of possession of property and symbolic possession was ordered to be delivered to him. The possession was not delivered as per order dated 22.12.2016 only on the ground that no specific description of property was mentioned. Learned counsel also submits that the boundaries of property were specifically mentioned and map of the plot was also annexed along with details of the boundaries but still the impugned order has been passed.

Learned counsel for the petitioner submits that the controversy involved in the present case is squarely covered by decision of Hon'ble the Apex Court in cases ***Pratibha Singh and another vs Shanti Devi Prasad and another 2003(1) RCR (Civil) 316*** and ***Satyawati vs Rajinder Singh and another 2014(2) CivillJ 638***.

Learned counsel for the petitioner submits that the present petition may be disposed of in view of directions as mentioned in ***Pratibha Singh's*** case (supra) and ***Satyawati's*** case (supra).

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Without issuing notice to the other party and by considering the submissions made by learned counsel for the petitioner and also the fact that the controversy in the present case is squarely covered by decision rendered in ***Pratibha Singh's*** case (supra) and ***Satyawati's*** case (supra), the present petition deserves to be allowed.

Hon'ble the Apex Court in ***Pratibha Singh's*** case (supra) has clearly held that when the suit has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of

provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the Civil Procedure Code is capable of being cured. It has also been held that after all a successful plaintiff should not be deprived of the fruits of decree and resort can be had to Section 152 or Section 47 of the Civil Procedure Code. Hon'ble the Apex Court by issuing certain directions disposed of the appeals in terms of directions as mentioned in para No.19 of the said judgment.

Order 7 Rule 3 of the Civil Procedure Code requires where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the Court to draw a proper decree as required by Order 20 Rule 3 of the CPC. In case, such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. In case, the plaintiffs have committed an error, the defendants should have objected immediately. The default or carelessness of the parties does not absolve the trial Court of its obligation while scrutinizing the plaint as pointed out the omission on the part of the plaintiffs and trial Court should have insisted on a map of the immovable property which is subject matter of suit being filed by plaintiffs.

In the present case, the suit has been decreed but the immovable property has not been identified definitely. This defect in the court record has been caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the Civil Procedure Code as it is capable of being cured. The successful plaintiff cannot be deprived of the fruits of decree. The directions issued by Hon'ble the Apex Court in

Pratibha Singh's case (supra) are as under :-

“19(1)(a) The Executing Court shall, after going through the record of the case and after affording the parties an opportunity of hearing, decide upon the correctness of the map filed by the plaintiff-decree holders during the execution proceedings and presently forming part of the Court sale deed dated 23.12.1998. If the Executing Court finds that the map forming part of the sale deed is not a correct map or needs to be rectified either wholly or in part, that shall be done and the map correctly drawn up under the orders of the court shall then form part of the sale deed. The necessary deed of rectification shall be executed and registered under the orders of the court. In that eventuality, the deed of sale dated 23.12.1998 shall take effect as rectified under the orders of the Executing Court.

(b) Thereafter possession over the property equivalent to 8 kathas of land as described in the sale deed executed in execution of the decree and as rectified in the event of an occasion arising for the purpose, shall be delivered by the judgment-debtors to the decree holders, if necessary through warrant of delivery of possession.

(c) It would be in the discretion of the Executing court to take such steps as may be necessary for fixing the identity of the property. The Executing Court may take assistance from the previous documents of title, the Revenue Records and/or may have a survey carried out by appointing a competent Commission. Nevertheless, the Court shall see that the decree holder gets the property as per agreement to sell and as decreed.

(ii) The amount of Rs.5,000/- (Rupees five thousand only) shall be deposited by the decree holders for

payment of the judgment-debtors within such time as may be appointed by the Executing Court.

(iii) The direction numbers (i) and (ii) above said are independent of each other and not inter-dependent. Each party must carry out its own obligation without insisting on compliance by the other as a condition precedent.

(iv) In view of the delay that has already taken place, it is directed that the hearing of the execution shall be expedited and concluded as early as possible, preferably within a period of four months from the date of communication of this order.”

On perusal of directions issued by Hon'ble the Apex Court in ***Pratibha Singh's*** case (supra), the discretion is with the Executing Court to take such steps as may be necessary for fixing the identity of the property. However, the Executing Court may take assistance from the previous documents of title, the Revenue Records and/or may have a survey carried out by appointing a competent Commission.

Accordingly, the present revision petition is allowed and the impugned order dated 22.12.2016 (Annexure P-13) passed by Civil Judge (Junior Division), Karnal is set aside. The case is remanded back to the Executing Court to decide the execution with guidelines/directions issued by Hon'ble the Apex Court in ***Pratibha Singh's*** case (supra). The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

06.03.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes