

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

**CR No.2534 of 2016(O&M)
Date of Decision-22.11.2017**

Jai Kumar

... Petitioner

Versus

Swaran Singh

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. J.S. Dahiya, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the orders dated 20.02.2016 and 22.03.2016 vide which objections filed by the petitioner were dismissed and the police help was granted for execution of the warrant of possession.

[2]. Brief facts are that the plaintiff/respondent filed a suit for specific performance of agreement to sell dated 25.05.2005 in respect of 8 kanals of land, directing the defendant to get the sale deed executed and registered in favour of the plaintiff after receiving the balance sale consideration of Rs.1,49,275/- and further directing to handover the possession of the land as shown in para No.1 of the plaint. Plaintiff pleaded that defendant is owner of agricultural land measuring 8 kanals 0 marlas i.e. 160/1280 shares of total land

measuring 64 kanals 0 marlas as per *jamabandi* for the year 2001-02 situated in the revenue estate of village Ghari Balal, Tehsil Gharaunda, District Karnal. Defendant agreed to sell the suit land to the plaintiff vide agreement to sell dated 25.05.2005 for a total sale consideration of Rs.3,00,000/- and received a sum of Rs.1,50,725/- as earnest money. 25.05.2005 was the target date for execution and registration of the sale deed on receipt of balance sale consideration of Rs.1,49,275/-.

[3]. Trial Court decreed the suit vide judgment and decree dated 07.12.2010. The decree was passed to the following effect:-

“It is ordered that the suit of the plaintiff succeeds and the same is hereby decreed with costs. A decree for specific performance of the agreement to sell dated 25.05.2005 qua the suit land measuring 8K-0M as fully detailed in para No.1 of the plaint is passed in favour of the plaintiff and against the defendant thereby directing the defendant to get the requisite sale deed executed and registered in favour of the plaintiff after receiving the balance sale consideration of Rs.1,49,275/- as per terms and conditions of agreement to sell dated 25.05.2005 within a period of three months from passing of this judgment and the defendant is further directed to handover the possession of the suit land to the plaintiff. In case, the defendant fails to execute and register the sale deed, within the period of three months, then the plaintiff would be at liberty to approach the Court for the purpose of execution and registration of the sale deed.”

[4]. Against the judgment and decree dated 07.12.2010, an appeal was preferred by the judgment debtor before the Lower Appellate Court which was dismissed and thereafter, RSA No.2575 of

2014 was filed before the High Court which was dismissed on 18.12.2015.

[5]. In the execution filed by the plaintiff/decreed holder, defendant/judgment debtor filed objections on the ground of pendency of regular second appeal and other grounds. Judgment debtor also filed an application for dismissal of the execution petition on the ground that process of execution had already been completed.

[6]. Civil Judge (Junior Division), Karnal vide order dated 20.02.2016 dismissed the application filed by the judgment debtor on the ground that though the judgment debtor is shown to be a co-sharer, but as per report of Kanungo on warrant of possession, the judgment debtor is in possession of killa Nos.7/1 and 7/2. Vide order dated 22.03.2016, executing Court further issued police help for execution of warrant of possession.

[7]. At the time of issuance of notice of motion on 07.04.2016, stay of delivery of physical possession was granted on the condition that the petitioner has to deposit an amount of Rs.1,49,000/- in the executing Court within a period of two weeks from the date of receipt of certified copy of aforesaid order. In view of aforesaid compliance, the execution was stayed.

[8]. I have heard learned counsel for the parties.

[9]. Learned counsel for the petitioner submitted that by virtue of sale deed executed in pursuance of the decree, only a share has

been purchased by the decree holder and the defendant/petitioner is still co-sharer in the joint land and therefore, delivery of specific khasra number cannot be granted to the decree holder. Learned counsel further submitted that even if, the sale is made in respect of specific khasra number out of joint land, the same amounts to sale of share in view of **Bhartu Vs. Ram Sarup, 1981 PLJ 204**. The decree is inexecutable to the extent of delivery of actual physical possession of the khasra number.

[10]. Learned counsel relied upon **Kanwaljeet Singh Vs. Manak Ram, 2007(1) LAR 90** and contended that in case of joint property, sale of undivided share would make the vendee a co-sharer and will not confer any right of actual physical possession of the property. In such circumstances, the vendee has to seek actual partition of the joint land.

[11]. On the other hand, learned counsel for the respondent submitted that the plaintiff/respondent has purchased 8 kanals of land. As per terms and conditions of the agreement, defendant was to deliver the possession of the suit land on execution of sale deed. Trial Court decreed the suit and directed the defendant/judgment debtor/petitioner to handover the possession of the suit land. Judgment and decree passed by the trial Court has been affirmed upto the stage of High Court in RSA No.2575 of 2014 which was dismissed on 18.12.2015. Petitioner/judgment debtor filed an application for dismissing the execution petition on the ground that the

process of execution had already been completed. The said application was dismissed by the executing Court vide order dated 20.02.2016 by holding that the crops were standing in killa Nos.7/1 and 7/2. The value of crop was assessed to the tune of Rs.9450/- towards cost of standing crop.

[12]. Learned counsel relied upon **ESA No.31 of 2012 titled Urmila Devi and another Vs. Charan Singh and others decided on 19.07.2012, Adcon Electronics Pvt. Ltd. Vs. Daulat, 2002(1) RCR (Civil) 806, Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685** and contended that in case of specific performance when decree is specific in nature thereby directing the defendant to deliver possession of the suit land which was in his possession, therefore delivery of that very portion of the joint property has to be delivered by the judgment debtor in compliance of the decree after registration of the sale deed. As per report of Kanungo, the judgment debtor has been found to be in possession of killa Nos.7/1 and 7/2, for which the decree holder has already deposited the cost of standing crop. After delivery of the possession, the decree holder would become co-sharer in community of interest with other co-sharers and the joint land would be subject to partition amongst the share-holders. So far as judgment debtor is concerned, he cannot obstruct the execution of decree, even if, he is found to be a co-sharer in the entire property. His liability is to honour the decree for specific performance and he is liable to deliver possession at the first instance and

thereafter, file objections or seek partition out of the joint land in case, he is proved to be still co-sharer in the joint property.

[13]. Learned counsel further submitted that in a suit for specific performance, the relief of possession is inherent and that has been awarded by the Civil Courts in favour of the decree holder. The executing Court is competent to deliver the possession, even if, the decree is silent with regard to such relief. In the instant case, the decree is very specific in respect of delivery of possession whereby defendant was specifically directed to handover the possession of the suit property which was in possession of the judgment debtor.

[14]. Evidently, the defendant was directed to get the sale deed executed and registered in favour of the plaintiff after receiving the balance sale consideration within specified time and further to handover the possession of the suit land to the plaintiff. In the event of failure on the part of the defendant, the plaintiff was granted liberty to approach the Court for execution and registration of the sale deed.

[15]. In the decree passed by the trial Court, there is a specific recital whereby defendant/judgment debtor was directed to deliver possession of the suit land in favour of the decree holder on receipt of balance sale consideration. A sale deed has been executed with the process of the Court and mutation has already been sanctioned. In the present suit for specific performance, in the agreement to sell, specific stipulation/condition was made that on execution of sale deed, possession of the immovable property will be transferred to the

purchaser/deed holder. As per sub Section (1) of Section 22 of the Specific Relief Act, plaintiff may ask for further relief in the suit for specific performance as mentioned in Clauses (a) and (b). In the instant case, Clause (a) of sub Section (1) of Section 22 of the Act has been duly complied with and specific direction was made by the Court for delivery of possession by the judgment debtor on execution of sale deed. The bar under sub Section (2) of Section 22 of the Act would come only if when the relief was not specifically claimed. It is implied that the delivery of possession of immovable property is part of decree of specific performance of contract. Plaintiff in a suit for specific performance can ask for further relief as mentioned in Clauses (a) and (b). Having done so and having granted by the trial Court, judgment debtor cannot deny the relief only on the ground that he is still co-sharer with other co-sharers and remedy is to seek partition and obtain possession of the suit land.

[16]. Where a co-sharer is in possession of separate parcel under an arrangement consented to by the other co-sharers, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition. A vendee for such a co-owner would, therefore, receive the property so transferred, with all the rights and liabilities that vested in his vendor, namely, a right to assert a community of interest (ownership) and a commonality of possession in the entire joint estate and along with the entire body of joint co-owners. The meaning of joint property as contained in Section 44 of the Transfer of Property Act viz-a-viz rights and liabilities of joint

land can be appreciated in the context of interpretation given to the said provision in **Ram Chander's case (supra)**. The said interpretation coupled with nature of decree passed in the present case would compel the petitioner to deliver the possession of the land bearing khasra Nos.7/1 and 7/2 to the extent of suit land and on such delivery of possession, proceed to maintain objection and seek partition in accordance with law.

[17]. The arguments raised by learned counsel for the petitioner on the strength of **Kanwaljeet Singh's case (supra)** are not attracted in case of specific performance where a specific direction was made to the defendant/judgment debtor to deliver possession of the suit land on execution of sale deed and in case of specific performance, delivery of possession is an implied relief and is a part of decree for specific performance. In **Pushpa Rani Paul Vs. Nitai Mukherjee and others, 2002(3) CCC 103 (Jharkand)** and **Prataprai Trambaklal Mehta Vs. Jayant Nemchand Shah and others, 1996 (2) CCC 677 (Bombay)**, it was observed that in a suit for specific performance, the relief of possession is inherent and could be awarded by the Court while decreeing the suit. There was no necessity to independently claim the relief of possession. The demand of relief for specific performance of a contract embraced within its ambit not only the execution of sale deed but also possession over the property conveyed under the sale deed. Even if, decree for specific performance of contract is silent as to the relief of delivery of possession, the executing Court is still competent to deliver

possession in view of **Prataprai Trambaklal Mehta's case (supra)**.

This Court in **Urmila Devi and another's case (supra)** has also endorsed the aforesaid proposition. Judgment debtor/petitioner has already lost the litigation upto the High Court in RSA No.2575 of 2014. In execution, judgment debtor cannot be allowed to add miseries of protracted litigation to the decree holder who has been contesting the litigation since 01.08.2006.

[18]. In view of facts and circumstances of the case, the judgment debtor is liable to deliver the possession of the suit property which is in his possession and if he still claims himself to be a co-sharer in the joint property, he can avail his remedies thereafter in accordance with law. The decree holder being vendee from joint owner/judgment debtor would receive the property so transferred to him with all rights and liabilities that vested in the judgment debtor. The rights are possessory rights qua the suit property for which the decree holder would be having a right to assert community of interest and possession. After obtaining possession of such interest from the judgment debtor, he would exhibit himself to be in place of judgment debtor so far as his rights qua other co-sharers are concerned. As per report of Kanungo on warrant of possession, the judgment debtor was found to be in possession of killa Nos.7/1 and 7/2, for which a decree for specific performance as per directions of the competent Court can be executed without there being any impediment.

[19]. For the reasons recorded hereinabove, I do not find any substance in this revision petition and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

22.11.2017
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