

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

CR No.2842 of 2017.

Date of Decision: 16.05.2017.

Milkha Singh (deceased) through LR Surinder Singh and others

....Petitioners.

VERSUS

Achhari (deceased) through LRs Wassan Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Inderjit Sharma, Advocate for the petitioners.

SNEH PRASHAR, J.

Assailing the order dated 21.11.2016 passed by learned Civil Judge (Junior Division), Gurdaspur by virtue of which the objections filed by the petitioners were dismissed as well as order dated 15.03.2017 dismissing the application for review/recalling of order, the instant revision petition under Article 227 of the Constitution of India has been filed.

The relevant facts, as they emerged from the impugned order, are that a suit for possession of land measuring 176 Kanals 4 Marlas by way of redemption of a mortgage was filed by Achhari, predecessor-in-interest of the decree holders. The suit was decided by the then learned Senior Sub Judge, Gurdaspur vide judgment and preliminary decree dated 23.04.1982 by virtue of which redemption of land measuring 77 Kanals 10 Marlas bearing killa no.8/19, 20, 21, 22, 14/1, 2, 9, 13/1, 12/2, 21/19/2, 20/1 and

33/5/2 was allowed. The defendants-judgment debtors filed an appeal which was dismissed by learned Additional District Judge, Gurdaspur on 18.11.1983. The regular second appeal was dismissed by this Court (High Court) on 17.11.2011. In that manner, the decree passed by learned trial court was upheld by the first appellate Court as well as in the regular second appeal. The decree holders then filed a petition for execution of the decree.

The petitioners-judgment debtors filed an objection petition under Section 47 read with Section 151 of the Civil Procedure Code, which was contested by the respondents-decree holders. Considering the submissions made by counsel for the parties, learned executing Court dismissed the objections vide the impugned order dated 21.11.2016. The application of the petitioners for recalling/review of the said order was also dismissed by learned executing court vide order dated 15.03.2017.

Aggrieved by the orders, the petitioners preferred the instant revision petition.

The submissions made by Mr. Inderjit Sharma, learned counsel representing the petitioners have been considered.

Learned counsel for the petitioners argued that although the suit of the decree holders for possession by way of redemption was in respect of land measuring 176 Kanals 4 Marlas, but learned trial court vide judgment and decree dated 23.04.1982 held that the decree-holder Achhari had a right to redeem land measuring 77 Kanals 10 Marlas only, yet the predecessor in interest of Achhari (decree holders) filed an execution petition for possession of land measuring 176 Kanals 4 Marlas and learned executing Court while dismissing the objection petition of the petitioners-

decree is to be executed. Learned counsel also contended that learned appellate Court while deciding the first appeal had mentioned in Para No.10 of the judgment that plaintiff-Achhari, being one of the mortgagee of the suit land, had share in the mortgaged land to the extent of 10 Kanals 4 Marlas only. In that manner, learned first appellate Court modified the decree and held decree holder Achhari entitled to possession of her share of land measuring 10 Kanals 4 Marlas only and therefore, the learned trial court may have allowed decree holder Achhari to redeem the land measuring 77 Kanals 10 Marlas but she cannot claim possession of the land more than her share.

There appears absolutely no merit in the arguments of learned counsel for the petitioner. The decree in favour of respondents-decree holders is dated 23.04.1982 and the execution also appears to be pending since 2011/2012. Apparently, by one way or the other, the petitioners-judgment debtors are being able to delay the execution of the decree. In Para No.10 of its judgment, learned first appellate Court may have observed that the share of plaintiff-Achhari in the mortgaged land is to the extent of 10 Kanals 4 Marlas but it had further specifically held that plaintiff Achhari is entitled to get the entire land measuring 77 Kanals 10 Marlas redeemed on payment of mortgage amount of Rs.6420/-. The argument of learned counsel for the petitioners that the decree was modified by learned first appellate Court is completely misconceived. The judgment and decree passed by learned trial court was upheld and the appeals filed by the petitioners-judgment debtors as well as by plaintiff-decree holder were dismissed. The regular second appeal filed by the judgment debtors was also dismissed

upheld and has since become final between the parties.

It may be true that the decree holder filed a petition for execution of the decree and for possession of land measuring 176 Kanals 4 Marlas, but it would be wrong to say that the impugned order of learned executing Court while dismissing the objection petition of the petitioners is silent with regard to the land in respect of which the decree of the trial Court is to be executed. It has been very clearly observed by learned executing court that decree holder Achhari has been allowed possession of land measuring 77 Kanals 10 Marlas bearing killa no.8/19, 20, 21, 22, 14/1, 2, 9, 13/1, 12/2, 21/19/2, 20/1 and 33/5/2 on deposit of mortgage amount of Rs.6420/-. It was also observed that the deposition of the mortgage amount was not in dispute. The decree is very clear and needless to say that the decree passed by learned trial court is also to be executed in letter and spirit.

Thus, there being no illegality, perversity or jurisdictional error warranting interference in the orders of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

16.05.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**