

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

Civil Revision No.4386 of 2017 (O&M)

Date of decision: 10.07.2017

Darshan Kaur and another

.....Petitioners

Versus

Sukwinder Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manjul Sud, Advocate,
for the petitioners.

Ritu Bahri, J.

Challenge in this petition is to the order dated 26.05.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Hoshiarpur, whereby objections filed by the petitioners (Judgment Debtors) have been dismissed and decree holder-respondent No.1 has been directed to file an application for grant of police help for taking possession of the property in dispute.

A decree of specific performance of the agreement to sell dated 02.12.1996 for execution of sale deed for the land measuring 6 Marlas out of land measuring 9 Marlas bearing Khasra No.443/2, Khewat No.405, Khatoni No.477 was passed in favour of plaintiff-respondent No.1 vide judgment and decree dated 07.01.2004 (Annexure P-2). This judgment has attained finality. Thereafter, respondent No.1-decree holder filed an execution application, wherein a Local Commissioner was appointed by the

executing Court for execution of the sale deed as per the judgment and decree dated 07.01.2004 (Annexure P-2). The Local Commissioner got the sale deed executed in favour of respondent No.1 for an area of 6 Marlas out of 9 Marlas bearing Khasra No.443/2, situated in village Pur Hiran, Tehsil and District Hoshiarpur. Decree holder-respondent No.1 also filed another application for delivery of possession of the land sold to her through the above said sale deed, whereupon Halqa Girdawar was appointed as Local Commissioner to visit the spot and deliver possession to the decree holder. The Local Commissioner visited the spot and submitted a report (Annexure P-3) to the effect that possession could not be delivered as there was construction on $7\frac{1}{2}$ Marlas of land out of 9 Marlas and $1\frac{1}{2}$ Marlas of land was in illegal possession of one Kuldeep Singh, who had affixed a gate over it. It was further submitted that possession could not be delivered without the help of police. The Sub Divisional Magistrate also submitted a report (Annexure P-4) to the same effect.

Thereafter, the present petitioners (judgment debtors) filed objections to the report of Halqa Girdawar to the effect that they were owners to the extent of $\frac{1}{3}$ share in Khasra No.443/2 as recorded in the Jamabandi (Annexure P-5), whereas respondent No.1 was recorded as owner to the extent of $\frac{2}{3}$ share. None of the parties has any specific portion specified in the revenue record and the petitioners (judgment debtors) have raised constructions over the Khasra number, which is existing for the last more than 20 years, therefore, possession of any specific portion cannot be given to decree holder-respondent No.1 without getting the land partitioned. Moreover, Kuldeep Singh was in illegal possession over $1\frac{1}{2}$ Marlas of land in Khasra No.443/2. It was further submitted that while executing sale deed

intentionally mentioned and hence, the possession cannot be given.

Heard, counsel for the petitioners.

After going through the impugned order, it transpires that judgment debtor Nos.3 and 4 (present petitioners) are closely related to judgment debtor Nos.1 and 2. Judgment debtor Nos. 1 and 2 have sold 3 Marlas of land to judgment debtor No.3 and 4-petitioners with an ulterior motive in order to harass the decree holder. Present petitioners did not place on record copy of any criminal proceedings initiated against judgment debtor Nos.1 and 2 for committing any fraud upon them, as there is a civil court decree against them. Once the decree holder has been declared owner of the suit property, subsequent sale in favour of judgment debtor Nos.3 and 4 (petitioners) was only done to exclude the decree holder from enjoying the fruits of the suit property. Moreover, the sale in favour of judgment debtor Nos.3 and 4 is hit by the principle of lis pendens. Hence, they had no right to challenge the ownership of decree holder over the suit property and their objections have been rightly dismissed by the executing Court.

After going through the impugned order, no illegality, much less perversity has been found therein warranting interference by this Court.

Dismissed.

10.07.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No