

**9IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-16564-CII-2017; and
CR No.4948 of 2017
Date of decision: 16.08.2017

Pritam Singh alias Billu and another

... Petitioners

Versus

Balbir Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Arvind Kashyap, Advocate for the petitioners.
Mr. HNS Gill, Advocate for caveator-respondent No.2.

ARUN PALLI, J. (Oral)

CM-16564-CII-2017

Allowed as prayed for.

CR No.4948 of 2017

Petitioners (Judgment Debtors) are in revision against the order dated 20.07.2017 (Annexure P1), rendered by the learned Additional Civil Judge (Sr. Divn.), Fatehgarh Sahib, vide which the objections preferred by them in execution application as regards the identity of the property, have since been dismissed.

The facts that are required to be noticed are limited.

Respondents No.1 to 3/decree-holders filed a Civil Suit bearing No.895/317-T, against the petitioners and their late father Sucha Singh, claiming a declaration that respondents happened to be the owner of the suit property to the extent of 1/3rd share each and for possession of a residential house depicted at letter 'X' in the headnote of the plaint. A decree for

mandatory injunction directing the defendants to hand over the articles mentioned at letter 'Y' was also prayed for. The Trial Court, vide judgment and decree dated 16.10.2006, decreed the suit. Respondent/decreed-holders had also filed another Suit bearing No.807/636-T against the petitioners and their late father, wherein they claimed 1/4th share in an agricultural land, situated in the revenue estate of Bassi Pathanan, being the Joint Hindu Family Ancestral Coparcenary Property. However, the said suit was dismissed by the Trial Court, vide judgment and decree of an even date i.e. 16.10.2006. Learned counsel for the parties are *ad idem* that the decrees passed in both the suits have since become final. Respondent/decreed-holders filed an execution petition No.78/2008 to obtain possession of the residential house and the articles of Istri Dhan. But the execution proceedings were resisted by the petitioners on the ground that the decree granted in favour of the respondents was only qua the house, whereas possession of a part of the land/area comprised in khasra No.49//6/1, measuring 8 karams (44 feet), was also being obtained therewith. And since the said khasra number was also a part of the suit property in **Civil Suit No.807/636-T**, wherein the respondents had claimed 1/4th share in the agricultural land being coparceners, and the said suit was dismissed, respondents could never be delivered possession of the area comprised in the said khasra number. However, the Executing Court dismissed the objections, as the properties in both the suits were different and distinct, for Civil Suit No.807/636-T was qua the agricultural land comprised in specific khasra numbers, whereas Civil Suit No.895/317-T was regarding a residential house. That is how, as indicated above, the petitioners are before this Court.

Learned counsel for the petitioners submits that the Executing Court, vide order dated 16.03.2017, had appointed the Field Kanungo, Bassi Pathana as Local Commissioner to determine the boundaries of the residential house qua which the decree was granted in favour of the respondents. And, vide reports dated 21.06.2017 & 13.07.2017, it was found that a part of the area of the house i.e. 8 Karams (44 feet) was indeed comprised in khasra No.49//6/1. Thus, he asserts that the respondent/decreed-holders, besides the residential house, could not be delivered possession even of the property/land that formed part of khasra No.49//6/1. Hence, the decree dated 16.10.2006 was in-executable.

Heard.

Before I proceed any further, it would be apposite to point out that respondent No.1 i.e. Balbir Kaur wd/o Ajaib Singh, happened to be the daughter-in-law of late Sucha Singh and respondents No.2 & 3 are her minor children. Meaning thereby, the petitioners happened to be the brothers of her late husband i.e. Ajaib Singh. Concededly, in a suit filed by the respondents, they had prayed for a decree for possession on the basis of title. Their claim was that the suit property, depicted at letter 'X' in the plaint i.e. a house, was purchased by late Ajaib Singh from his late father Sucha Singh vide a registered sale deed dated 18.01.1988. And a copy of the site plan of the said house along with its boundaries was duly appended with the sale deed. It is not disputed either that the respondents proved their title and their suit was decreed. Indisputably, the decree granted in favour of respondents No.1 to 3 has since attained finality. Meaning thereby, the respondent/decreed-holders are entitled to be put in possession of the suit property i.e. a house.

Undoubtedly, another suit filed by the respondent/decreed-holders i.e. Civil

Suit No.807/636-T, against the petitioners and their father, was dismissed by the Trial Court. But the fact remains that the said suit was qua an agricultural land comprised in Khewat No.947, Khatoni No.1312, Khasra No.45//14/2 (5-16), 15/2/2 (2-19), 16(8-0), 17/1(3-4), 17/2(4-17), 24(8-0), 25(8-0), 48//10/3 (2-10), 49//4(8-0) & 6/1(4-11), situated in Village Bassi Pathanan, wherein the respondents had claimed 1/4th share being coparceners. Hence, the suit properties that were the subject matter of both the suits were distinctly different. Even though, as reported by the Field Kanungo vide reports dated 21.06.2017 & 13.07.2017, a part of the area of the residential house i.e. 8 Karams, was comprised in khasra No.49//6/1, but in the given situation that would be inconsequential. The house in question with defined boundaries was sold by late Sucha Singh (father of the petitioners) to the late husband of respondent No.1 and father of respondents No.2 & 3. So, even if a part of the said house or some area falls in khasra No.49//6/1, the respondent/decreed-holders cannot be denied possession thereof on any such ground. Further, no such plea was set up by the petitioners during the trial of the suit. And, now having suffered a decree, they could not be permitted to raise any such objection. It does not end there, even earlier the petitioners had filed similar objections and the same were dismissed vide order dated 14.07.2016 (Annexure P13), and thereafter on 16.03.2017 by the Executing Court (Annexure P5). It is not disputed either that the petitioners never assailed these orders, and the same have since become final against the petitioners.

An analysis of the position, as sketched out above, leads to an irresistible and inescapable conclusion that the repeated objections that are being preferred by the petitioner-judgment debtors were to thwart the

process of execution or to deprive respondents No.1 to 3 of possession of their house. That being so, the only and the inevitable conclusion that the Executing Court or even this Court could reach is; that the objections preferred by the petitioners as also the present revision lacks both i.e. merit as also the bonafides.

Accordingly, the revision petition is dismissed.

(Arun Palli)
Judge

August 16, 2017
Rajan

Whether speaking/reasoned:
Whether Reportable:

YES
NO