

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 226

Civil Revision No.684 of 2014 (O & M)

Date of Decision: *March 10, 2017*

Rohtash

.... PETITIONER

VERSUS

Deep Chand

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. S.K. Yadav, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated September 28, 2013 passed by the Civil Judge (Senior Division), Narnaul (hereinafter referred to as, 'executing court'), whereby an execution petition preferred by the petitioner – plaintiff against judgment & decree dated March 31, 2004 BK has been dismissed on the ground of limitation.

2. While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that predecessor-in-interest, father of the petitioner namely Ram Chander had filed a suit against father of the respondent namely Umda for possession of Sikni Nos.9 and 12 as

well as for permanent injunction. The said suit was decreed vide judgment dated March 31, 2004 BK to the following effect :-

“Decree for possession is passed against the defendant for Kotha No.6 in favour of the plaintiff. Decree of permanent injunction against the defendant to the effect that Poli No.2 and Sahan No.8 are in joint possession and use of plaintiff and defendant is restrained from interfering in the use of same. Suit of the plaintiff for Sakni No.12 is dismissed because plaintiffs are not completely succeed therefore order is passed. Parties shall bear their own costs. After preparing the decree and file be consigned to record room after due compliance. Order pronounced dated 31.03.2004.”

3. The aforesaid judgment & decree was not challenged by the defendant – Judgment Debtor and as such, it has attained finality. Thereafter, the respondent did not honour the judgment and started making alterations in the suit property without the concurrence and permission of petitioner – Decree Holder which necessitated the filing of execution petition against the respondent for execution of decree dated March 31, 2004 BK.

4. During the pendency of aforesaid execution petition, respondent – JD preferred objections on the ground that execution petition is liable to be dismissed being beyond limitation. Objection petition was accepted by the executing court vide impugned order dated September 28, 2013 and consequently, execution petition was dismissed.

5. Learned counsel for the petitioner has further urged that executing court has failed to appreciate the fact that the judgment & decree is of permanent injunction and same is perpetual in nature, therefore, the respondent – JD is bound to honour the decree and there is no limitation provided for execution of the decree which is perpetual in nature. As per Proviso appended to Article 136, there is no limitation prescribed to execution of the decree. Learned executing court has wrongly relied upon

judgments which are otherwise not applicable to the facts & circumstances of the case. Since there is no limitation for execution of the decree which is perpetual in nature, impugned order dated September 28, 2013 is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of the instant revision petition and execution petition deserves to be allowed.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner and has scrutinized the impugned order, however, does not find any legal and factual weight in the submissions made by learned counsel for the petitioner.

7. No doubt, decree dated March 31, 2004 BK was passed in favour of petitioner – DH but there is nothing on record that DH ever remained in possession of the suit property. A perusal of the execution petition preferred under Order XXI Rule 11 CPC transpires that infact DH intends to take possession of the suit property through the execution petition. The LR of DH has not disclosed anywhere in the petition as to when he was dispossessed or any obstruction in the house of the joint property was created by the JD. Moreover, during the pendency of execution petition, DH made a request for appointment of Local Commissioner which clearly depicts that he is not in possession of the suit property. Since the petitioner – DH intends to take possession of the suit property in an indirect way and by circumventing the actual facts, the execution petition should have been filed within a period of 12 years from the date of its passing. Since the decree was passed on March 31, 2004 BK, the same is hopelessly time barred. As such, this Court is of the considered view that the impugned order is absolutely in consonance with the actual

facts as well as legal proposition of law and does not call for any interference by this Court.

8. As a net result of the aforesaid discussion, this Court is of the considered view that the instant petition is devoid of merits, and as such, the same is dismissed.

9. No order as to costs.

March 10, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No