

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

**CR No. 7664 of 2016
Date of Decision:- 20.01.2017**

Kaka Singh

....Petitioner

vs.

Pal Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Manish Kumar Singla, Advocate,
for the petitioner.

Mr. H.N.S. Gill, Advocate,
for respondent No.1.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 17.10.2016 passed by the learned Additional Civil Judge (Sr. Division), Mohali, whereby the Executing Court has directed to submit report regarding possession without deciding the objections.

Briefly, the facts of the case, as mentioned in the revision petition, are that respondent Pal Singh filed suit for separate possession of 3/52 share through partition out of land comprised in Khewat/Khatauni No. 26/30, Khasra No. 57/83 to 239/10 (6 B 2 B) G.M. Makanat and 1/20 share in Khewat/Khatauni No. 15/15, Khasra No. 83 to 239/11 (120 B – 6B) G.M.

Abadi situated at Village Sainimajra on the basis of Jamabandi for the year

2002-03 and for permanent injunction restraining from raising construction of any kind over the vacant portion. Defendants were proceeded ex parte and ultimately preliminary decree was passed for separate possession by way of partition of 3/52 share on the basis of Jamabandi for the year 2002-03. Thereafter, the final decree was passed vide order dated 2.9.2015. The appeal filed against the same is pending adjudication before learned Additional District Judge, Mohali. Respondent No.1 filed execution application dated 15.10.2015 and petitioner filed objections to the execution application.

Reply to the objections was filed by respondent No.1 but the Executing Court without deciding the objections has passed impugned order dated 17.10.2016 provided police help with a further direction to the Civil Court to comply with the order and to file report on the next date. Impugned order dated 17.10.2016 has been challenged on the ground that objections are still pending and decree cannot be executed without deciding the same.

Learned counsel for the petitioner submits that the Executing Court while passing the impugned order has not taken into consideration the real controversy between the parties whereas it is a settled proposition of law that no one should be condemned unheard. It is also the argument of learned counsel for the petitioner that the alleged report of Local Commissioner is totally contrary to law and no opportunity whatsoever was provided to the petitioner to file any objection to the report of the Local Commissioner. Learned counsel also submits that the petitioner has no objection in giving the area to respondent No. 1 after leaving his share in

Khasra No. 83-230/11 (20-6). At the end, learned counsel for the petitioner submits that the appeal against order and decree dated 2.9.2015 is still pending and the Executing Court has acted in a hurried manner while proceeding with the execution application.

While issuing notice of motion on 15.11.2016, it was contended by learned counsel for the petitioner that the executing Court has passed the order for providing police help to execute warrant of possession without deciding the objections moved by the petitioner (JD No.1). Even the reply to said objections was filed on the date when the impugned order was passed.

Learned counsel for respondent No.1 has not disputed in case the objections filed by the petitioner are considered by the Executing Court.

I have heard learned counsel for the parties and have perused the impugned order.

Admittedly, the objections were filed by the petitioner and without deciding the objections, the Executing Court has passed the impugned order and provided police help also to execute warrant of possession. It is also not disputed that the appeal against judgment of trial Court is still pending. Therefore, the Executing Court cannot proceed with the execution when appeal is pending and objections have not been decided.

Accordingly, the present petition is allowed and impugned order dated 17.10.2016 passed by the Executing Court is hereby set aside.

The case is remanded to the Executing Court to consider the objections filed by the petitioner after affording proper opportunity of hearing to the

petitioner, and take final decision in accordance with law.

Parties are directed to be present before the Executing Court on
20.2.2017.

January 20, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes