

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

CR No.7793 of 2016.

Date of Decision: 12.01.2017.

Manohar Lal

....Petitioner.

VERSUS

Smt. Bhanti and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kuldeep Singh Yadav, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant revision petition has been preferred against the order dated 28.10.2016 passed by learned Additional Civil Judge (Senior Division), Bhiwani by virtue of which the application filed by the petitioner for recalling of warrant of possession was dismissed.

The facts that emerge from the impugned order passed by learned trial Court (the executing Court) are that respondents No.1 to 5 Smt. Bhanti and others filed a suit for declaration against their brothers Rohtash and Sheolal (respondents No.6 and 7), Ramphal (respondent No.8-subsequent purchaser) and Manohar Lal-petitioner, who was alleged to be a trespasser on the suit property, claiming that they are owners-in-possession of equal shares to the extent of 5/7th share in the suit land comprised in three plots by virtue of inheritance of the suit property from their deceased father Sukhdev son of Khyali Ram. The suit was decreed by learned Civil Judge

vide judgment and decree dated 31.05.2010 and the sale deed dated 17.04.2004 executed in favour of Ramphal was set aside. However, no relief was granted against Manohar Lal-petitioner (defendant No.4) on the ground that the plaintiffs had failed to prove any encroachment by the said defendant. In the appeal filed by Smt. Bhanti and others-plaintiffs (respondents No.1 to 5), learned first appellate Court directed Manohar Lal-petitioner to remove the encroachment and hand over possession of the suit property to the plaintiffs within a period of one month. The appeal filed by the petitioner and respondents No.6 to 8 was dismissed.

Since the petitioner failed to hand over possession of the suit property to the plaintiffs complying with the direction of first appellate Court, the decree holders-respondents No.1 to 5 filed an execution petition in which the learned executing Court issued a warrant of possession. The petitioner filed an application for recalling the warrant of possession alleging that decree holders No.2 and 5 had sold their shares to him and, therefore, the possession of the suit property occupied by him cannot be disturbed. The application was contested by decree holders No.1,3 and 4. While the contesting decree holders claimed that they are entitled to the land in possession of petitioner Manohar Lal on behalf of the five decree holders, learned executing Court finding the petitioner-judgment debtor No.4 as transferee-assignee of decree holders No.2 and 5 held that the decree holders No.1,3 and 4 were entitled to execution of the decree to the extent of their share only and declined to recall the warrant to the extent of 3/5th share of the decree holders.

Feeling aggrieved, the petitioner has filed the instant revision

The submissions made by Mr. Kuldeep Singh Yadav, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argued that having purchased share of decree holders No.2 and 5, the petitioner had stepped into their shoes and his possession of the suit property was legal and he could not be dispossessed at the instance of the other decree holders. Learned counsel also submitted that the petitioner has already filed petition for partition of the suit property and in the meantime, he has a right to protect his possession over the suit property. Referring to Order XXI Rule 16 of the Civil Procedure Code, learned counsel contends that a transferee of decree can execute the decree in the same manner and subject to the same conditions as the original decree holder. By way of purchase of share of decree holders No.2 and 5, he becomes entitled to 2/5th share. Being one of the decree holders, he cannot be dispossessed from the suit property by the other decree holders.

The question that the petitioner by purchase of share of decree holders No.2 and 5 (respondents No.2 and 5) has stepped into their shoes and has become transferee of the decree is not a matter in issue. Decree holders No.2 and 5 have sold their shares to the petitioner and he has become entitled to share in the suit property to that extent. However, sale of their share by decree holders No.2 and 5 would not make the decree in favour of decree holders No.1,3 and 4 redundant or inexecutable. They, indeed, have a right to execute the decree to the extent of their share. Considering the right of the petitioner, the findings of learned executing Court are as under:-

of the decree to the extent of 216 square yards from decree holders no.2 and 5 is entitled to protect his possession up to the 2/5th share, however, he cannot claim the remaining area because being transferee of decree holder no.2 and 5, he is entitled to only relief which was granted to them i.e. a declaration of ownership with right of deemed possession along with other co-sharers of his share in joint property. He cannot get possession of their remaining undivided share in the present execution without filing suit for partition by metes and bounds. Since there was no order of possession of undivided share in the present judgment/ decree under execution the said relief cannot be granted to JD no.4 and the contention of learned counsel for the applicant/ JD no.4 is misconceived and same is rejected.”

Learned counsel for the petitioner could not demonstrate any illegality or perversity in the above findings of learned executing Court. Even when the petitioner has initiated proceedings for partition of the suit property, decree holders No.1,3 and 4 have a right to get the decree executed to the extent of their share i.e. 3/5th share in the suit property occupied by the petitioner.

Thus, there being no merit in the petition, it is dismissed.

(SNEH PRASHAR)
JUDGE

12.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**