

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

**C.W.P. No.19499 of 2017
Date of Decision:30.08.2017**

Paramjit KaurPetitioner
Vs.
**Sub Divisional Magistrate-cum-Collector,
Mohali and others**Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. H.B.S. Baidwan, Advocate for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for seeking a writ in the nature of prohibition in order to restrain respondent No.1 (Sub Divisional Magistrate-cum-Collector), Mohali from issuing warrants of possession to respondents No.2 and 3 in the execution proceedings pending in the case titled as **Dalbir Singh and another v. Sewa Singh and others** decided by respondent No.1 vide order dated 24.11.2016 till the proceedings pending in the civil suit, filed by the petitioner, in the Court of Civil Judge (Junior Division), Mohali is finally concluded.

The facts given to me in Court are that one Parwar Chand was the owner of the land in question, which he mortgaged with one Bishan for ₹175 in the year 1958. Bishan (mortgager in possession) died and his mortgage rights devolved upon his three sons, Sewa Singh, Pritam Singh and Prem Singh. Pritam Singh also died and his rights devolved upon his two sons Avtar Singh and Pritpal Singh. The mortgager sold his right of redemption in the year 1973 to one Usha Rani, who further sold those rights to Dalbir Singh and Didar Singh in the year 1984.

The predecessor-in-interest of Bishan Singh filed a suit for foreclosure in the year 1997 alleging that the right of mortgager to redeem the land is over and the said suit was decreed in their favour in the year 2000. Thereafter, the mortgagee, i.e. predecessor-in-interest of Bishan sold the land in question to the petitioner. On the other hand, after acquiring the right of redemption by way of sale, Dalbir Singh and Didar Singh filed an application, for seeking redemption, before the Collector in terms of the provisions of the Redemption of Mortgage (Punjab) Act, 1913. The said application was allowed by the Collector on 24.11.2016 in which the petitioner was not a party. As soon as the petitioner came to know about the order of the Collector dated 24.11.2016, he filed suit for declaration and permanent injunction. The suit is still pending. The petitioner also filed an application for temporary injunction under Order 39 Rules 1 and 2 of the CPC. The application was dismissed by the Trial Judge. The petitioner filed miscellaneous appeal which was also dismissed by the First Appellate Court. Now the petitioner has a right to file civil revision in this Court to challenge both the orders of the Courts below declining temporary injunction. In the meantime, the petitioners came to know that Dalbir Singh and Didar Singh have also filed an application for execution of the order dated 24.11.2016 before the Collector. The petitioners are afraid that till the suit is decided, Dalbir Singh and Didar Singh may not take possession from the petitioner of the land in question. In support of his submission, he has relied upon decision of the Supreme Court rendered in the case of

Brahmdeo Choudhary v. Rishikesh Prasad Jaiswal, 1997(1) R.C.R.

(Rent) 332. This judgment is cited in order to highlight the provisions of Order 21 Rule 97, 98 and 99 of CPC i.e. which pertains to the objection to be filed by the stranger to the execution.

I have heard counsel for the petitioner and perused the record with his able assistance. Insofar as the locus standi of the petitioner to maintain this petition is concerned, am of the considered opinion that this petition is totally misconceived because the petitioner has already challenged the order dated 24.11.2016 in the civil suit which is pending. The temporary injunction was also sought during the pendency of the suit which has been declined by the Civil Court and the First Appellate Court. The only remedy available to the petitioner to protect his possession is by way of Civil Revision which may be filed in this Court to challenge the orders of the trial Court and First Appellate Court. The Writ Court for the purpose of issuance of a prohibition as prayed to restrain the Collector not to execute the order dated 24.11.2016, which is already under challenge in civil suit cannot be permitted. Accordingly, the petition is hereby dismissed.

August 30, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No