

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

**ESA No.26 of 2016(O&M)
Date of Decision: 23.10.2017**

Ashok Kumar ...Appellant

Versus

Yashoda and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Naveen S. Bhardwaj, Advocate
for the appellant.

Mr. Rose Gupta, Advocate
for respondent No.1.

None for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. This appeal has been preferred by the appellant against the judgment dated 25.02.2016 passed by Civil Judge (Junior Division), Hisar as well as judgment dated 28.03.2016 passed by Additional District Judge, Hisar whereby the objections filed by the appellant were dismissed.

[2]. A civil suit for possession and permanent injunction i.e. Civil suit No.273-C of 1996 titled Smt. Yashoda Vs. Jaswant Singh was filed on 04.11.1996/19.09.1997 before the trial Court at Hisar.

[3]. The suit was decreed for possession by removing

malba of gair mumkin plot measuring 1 kanal 11 marlas comprised in khewat No.2244/2211, khatauni No.2677 min and khasra No.4347 (previously khasra Nos.9112//8242 (0B-18B), 9908//7965 (1B-7B) and 9627//7923 (1B-6B)) situated at Hisar, Tehsil and District Hisar. Defendant was directed to deliver the possession of the suit property to the plaintiff within two months from the date of passing of the judgment and decree dated 04.02.2003. Execution second appeal i.e. ESA No.52 of 2014 was dismissed by the High Court vide order dated 13.11.2014 on the ground that objector was not party to the suit. However, the objector was given permission to file an application before the Executing Court.

[4]. The suit filed by the plaintiff/decreed holder was in respect of plot measuring 1 kanal, 11 marlas comprised in khasra No.4347. The objector was not party to the said suit. The objector is a tenant of Ram Kumar son of Bhagwan Dass and is running a shop of cycle repairs under the name and style of Raju Makkar Cycle Works. The shop of the objector/appellant does not fall under khasra No.4347, rather the same falls under khasra No.4348 which is alleged to be *gair mumkin gali* vesting in *shamlat deh*. The factum of alleged *gair mumkin gali* or public thoroughfare in khasra No.4347 was denied by the objector/appellant as there are privately owned shop in khasra

No.4348 and the shop of the objector/appellant is the first shop in the series of the shop inside the said khasra No.4348.

[5]. Executing Court passed the order dated 14.05.2012 and under the garb of said order, Bailiff started threatening the objector to demolish the shop as a police help was also granted to the decree holder to demolish the shop of the objector falling under khasra No.4348 in order to have access to the khasra number of the decree holder i.e.4347.

[6]. Apparently, the controversy as culled out from the facts on record is that a decree for possession was passed in favour of the decree holder in respect of khasra No.4347 which has alleged access through khasra No.4348 in which shop of the objector is situated. Khasra No.4348 is claimed to be *gair mumkin gali* vesting in *shamlat deh*. No proceeding of eviction has taken place against the objector by the rightful owner at any point of time. It was only in the execution of the decree in respect of khasra No.4347, shop of the objector situated in khasra No.4348 was sought to be demolished as there is no access to khasra No.4347. Apparently, no action has been initiated by any owner of khasra No.4348 against the illegal encroachment by encroachers or for demolition of the construction raised in khasra No.4348.

[7]. Even if, it is presumed that the objector is in

unauthorized possession of khasra No.4348 which is not the subject matter of decree under execution, he can only be dispossessed in due course of law. While deciding ESA No.52 of 2014, High Court vide order dated 13.11.2014 granted liberty to the petitioner to file an application before the Executing Court in order to protect his right.

[8]. During course of arguments, it has come to fore that in respect of alleged encroachment in khasra No.4348, no proceedings have been initiated by anyone in respect of eviction or demolition of the construction raised by the alleged encroachers. Appellant has specifically taken a stand that objector is a tenant of Ram Kumar son of Bhagwan Dass and decree holder is not in possession of khasra No.4348. It is only claimed to be public street for having access to khasra No.4347.

[9]. Both the Courts below have recorded a finding that the ownership of Ram Kumar or Jagbir over the shop falling under khasra No.4348 was not established by the objector by means of any evidence. There was no rent agreement, nor owner was examined, therefore link evidence was not established viz-a-viz the ownership of lessor of the objector/appellant. As per *jamabandi* for the year 1974-75 Ex.OX and *jamabandi* for the year 2008-09 Ex.OY, khasra No.4348 is found to have been vested in *shamlat deh* and is shown to be *gair mumkin gali*.

Rishal Singh and Bhagwan Singh are shown to be in cultivating possession of khasra No.4348. The objector/appellant claims himself to be tenant of Ram Kumar son of Bhagwan Dass who has been recorded in cultivating possession of khasra No.4348. Since khasra No.4348 is not the suit land decreed under execution, therefore independent proceedings are required to be initiated against the unauthorized encroachers of public street, if any, by the rightful owners. In the absence of any such proceedings, the construction raised in khasra No.4348 cannot be demolished for laying smooth passage for khasra No.4347.

[10]. It appears from the record that the Executing Court has provided the police help in order to execute the decree in respect of khasra No.4347 by demolishing the construction existed in khasra No.4348. Apparently, the objector is not party to the decree under execution, nor the suit land covers khasra No.4348 in any manner. It is a settled principle of law that a person who is in alleged unauthorized possession can only be evicted in due course of law for which lawful proceedings are required to be initiated by the competent person.

[11]. In view of facts on record, the present execution second appeal is allowed. Objections filed by the appellant before the Executing Court are accepted. The decree holder would be at liberty to execute the decree in respect of khasra No.4347 in

accordance with law without insisting upon demolition of the shop of the objector/appellant in khasra No.4348. However, competent person may resort to lawful proceedings for eviction of the appellant from alleged public street in accordance with law.

[12]. Disposed of accordingly.

23.10.2017
prince
Whether Reasoned/Speaking

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Whether Reportable

Yes/No