

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1577 of 2016 (O&M)

Date of Decision: December 19, 2018

Pirithi

.....Petitioner

versus

Dharampal (deceased) through LR and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Ajay Jain, Advocate, for the petitioner.
Mr.Nitin Sachdeva, Advocate, for
Mr.Vishal Garg Narwana, Advocate, for respondent No.1

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Amit Rawal, J. (Oral)

CM No.13646-CII of 2016

For the reasons mentioned in the application, the same is allowed and legal representatives of deceased-respondent No.4, as per their details given in para No.2 of the application, are brought on record.

Amended memo of parties is taken on record.

CR No.1577 of 2016

The present revision petition is directed against the impugned order dated 16.02.2016 whereby application submitted by the judgment-debtor (Annexure P-9) for dismissal of the execution application on the premise that dehors of the judgment and decree dated 10.10.2011 whereby respondent-defendants-JD were restrained from forcibly dispossessing the plaintiff and the remedy would be to file a civil suit for possession, has been allowed.

Learned counsel for the petitioner submits that the trial court vide judgment and decree dated 10.10.2011, passed the following order:-

“... It is ordered that the present suit of the plaintiffs succeeds and stands decreed with no order as to costs to the effect that the defendants are hereby restrained not to interfere in the cultivating possession of the plaintiff over the land measuring 16 kanals 0 marlas comprised in Khasra No.114/10/2 (4-0), 11/2(6-0), 20 min west (6-0), kitta 3, Khewat No.465, khatoni No.684 situated at village Parta, Tehsil Tohana, District Fatehabad. Defendants are also restrained not to dispossess the plaintiff from the suit land forcibly and illegally without getting the suit land redeemed from the competent Court of law of which the plaintiff is in physical possession as mortgage with possession vide registered mortgage deed No.1287 dated 01.06.2006.....”

Since judgment debtor has forcibly taken possession, the trial Court vide order dated 05.12.2015 (P-8), allowed the application of the decree-holder entitling him to restore possession. The relevant part of the order dated 05.12.2015 reads as follows:-

“... Civil Procedure Code, 1908-021, R-32-Execution-Decree of prohibitory injunction- After passing of the decree, JD forcibly encroached the suit land by dispossession DH-possession can be restored to DH in whose favour decree of prohibitory injunction was passed and was dispossessed after passing of the decree. DH cannot be compelled to file another suit.

Thus, in view of the above referred law and the facts and circumstances of the case, the plaintiff/decreed holder is entitled to restore the possession of the suit land and as such the application in hand is accordingly allowed....”

In such circumstances, the trial court could not have passed the impugned order relegating the petitioner to file independent suit for possession.

Learned counsel for the respondent supported the impugned order and submitted that once possession has been taken in the absence of decree for possession under the provisions of Order 21 Rule 32 CPC, the trial court is remediless to order restoration of possession. The mistake can always be rectified even if the order dated 05.12.2015 was not challenged.

I have heard learned counsel for the parties and gone through the paper book and of the view that there is a force in the submission of learned counsel for the petitioner.

The order of the Court either interim or injunction decree, cannot be permitted to be flouted and disregarded with infirmity.

Hon'ble the Supreme Court in Meera Chauhan versus Harsh Bisnoi and another, 2007(1) R.C.R. (Civil) 597, in paragraphs 17 and 18 of the judgment has held that whenever, the parties violate the order of injunction or stay order or act in violation of the said order, the Court can, by exercising its inherent powers, put back the parties in the same position, as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

While interpreting the provisions of Order 21, Rule 32, this Court in Ram Singh versus Sukh Ram 1989(2) PLR 579 has also laid down the similar principle in para No.4 &5. In other words, it has been held that while entertaining the application under Order 21, Rule 32 CPC, executing Court is not powerless regardless of the decree of possession. In such circumstances, the impugned order cannot be sustained, the same is accordingly set-aside and the revision petition is allowed. The petitioner

shall be at liberty to seek implementation of the order dated 05.12.2015 in accordance with law.

December 19, 2018

mohinder

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No