

(251) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1425 of 2018 (O&M)

Date of decision: 10.08.2018

Kuldeep Singh and another Petitioners

Versus

Arwinder Singh and others Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. M.S. Kang, Advocate for the petitioner.
Mr. Rakesh Gupta, Advocate for respondent No.1 and 2.

B.S. Walia, J. (Oral)

[1] Learned counsel for respondents states that the judgment and decree dated 05.12.2011 passed by the learned trial Court in favour of respondent No.1/plaintiff was upheld by the learned First Appellate Court vide judgment and decree dated 03.03.2016 and that in terms thereof, respondent No.1 is entitled to symbolic possession from the Executing Court.

[2] Learned counsel for the petitioner on the other hand states that Regular Second Appeal No.2401 of 2016 has been filed against the judgment of the learned trial Court as upheld by the learned First Appellate Court and the same is pending adjudication before this Court for 11.12.2018 in the main case as well as in the application seeking stay of operation of the judgments of the Courts below.

[3] Learned counsel for respondents states that the challenge in the revision petition is to the warrant of possession issued by the learned Additional Civil Judge (Sr. Div.), Phillaur. Learned counsel contends that the handing over of possession is subject to the outcome of the partition proceedings which are pending before the Revenue Authorities and that at present the Executing Court has merely issued warrant of possession for handing over of symbolic possession of the suit property and not the actual physical possession of the suit property. Learned counsel further states that since the claim of respondents before the Executing Court is only for grant of symbolic possession, therefore, the apprehension of the petitioner is without any basis, particularly in view of the fact that as per Order 41 Rule 5 of the CPC, mere pendency of appeal will not amount to stay of operation of the judgment and decree of the Courts below.

[4] Be that as it may, in view of the stand of learned counsel for respondents that only symbolic possession has been ordered by the learned Executing Court and the actual physical possession would be subject to the outcome of the partition proceedings, therefore, the revision petition is disposed of with liberty to the petitioner to take out appropriate steps in accordance with law before the appropriate forum to seek stay with regard to handing over of actual possession.

[5] Disposed of with the aforesaid observations.

(B.S. Walia)
Judge

10.08.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No