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

CR No. 4714 of 2016

Date of Decision: 30.11.2018

Sukhchain Singh and others

-Petitioners

Vs

Shammi and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.D. Sharma, Advocate,
for the petitioners.

Mr. K.S. Rekhi, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

Vide judgment and decree dated 16.09.2006, suit filed by the plaintiffs-respondents was decreed to the following effect:-

“In view of my findings recorded above, suit of the plaintiffs partly succeeds and plaintiffs No.7 is declared joint owner in possession to the extent of ½ share in the suit property and sale deed dated 27/10/1997 Ex.D1 executed by Shammi plaintiff No.7 is ordered to be set aside, subject to deposit of Rs.120,000/- the amount of sale consideration of sale deed

Ex.D1 alongwith interest at the rate of 8% per annum from the date of the execution of the sale deed till today, in the Court within one month. However, suit of the plaintiffs No.1 to 6 regarding declaration and permanent injunction is ordered to be dismissed. Keeping in view the peculiar facts and circumstances of the case, both the parties are left to bear their own costs. Decree sheet be prepared. File consigned to the record room.”

In the execution carried out by the decree holder, warrants of possession of ½ share of the suit property was issued on filing requisite charges vide the impugned order dated 02.07.2016 passed by Additional Civil Judge (Senior Division), Ajnala.

Petitioners being aggrieved by the aforesaid order ventured to file the present revision petition on the premise that since the decree was for joint possession, therefore, actual delivery of possession vis-a-vis specific khasra number cannot be granted without there being any partition by metes and bounds.

At the time of issuance of notice of motion on 04.08.2016, following order was passed by the Co-ordinate

Bench:-

“The present petition lays challenge to orders dated 20.05.2016 (Annexure P6) and 02.07.2016 (Annexure P7) passed by the Additional Civil Judge (Senior Division) Ajnala whereby the objections filed by the petitioners under Section 47 of the Code of Civil Procedure (in short 'CPC') have been dismissed and warrants of possession of half share of suit property have been issued respectively.

Heard.

No ground is made out to interfere in order dated 20.05.2016 whereby the objection petition filed by the petitioners has been dismissed as the discretion exercised by the executing Court, permitting decree holder/respondent to deposit balance amount of Rs.8,952.33 in the light of the fact that he had already deposited an amount of Rs.1,96,400.00 on 03.04.2010 in compliance with order dated 12.03.2010 passed by the Court can neither be held to be arbitrary much less perverse. That being so, order dated 20.05.2016 passed by the executing Court is

ordered to be affirmed.

Counsel for the petitioners, inter alia, contends that the executing Court has issued warrants of possession qua half share of the suit property but possession of half share cannot be delivered in favour of the decree holder without seeking partition of the joint property. In support of his contention, he has relied on judgment of this Court Kashmir Sinigh v. Tana and others, 2000(4) R.C.R. (Civil) 6.

Notice of motion to respondent No. 1 limited for challenge to order dated 12.07.2016, returnable for 08.12.2016.

In the meantime, the executing Court is directed not to execute the warrants of possession for delivery of actual possession but said warrants may be executed with regard to delivery of symbolic possession.”

Perusal of the aforesaid order would show that the Executing Court was directed not to execute warrants of possession for delivery of actual possession but warrants of possession were ordered to be executed with regard to symbolic

possession.

Learned counsel for respondent No.1 admits the aforesaid legal position and further submits that the decree holder would obtain actual possession of $\frac{1}{2}$ share as per decree only after partition of the land by metes and bounds in accordance with law.

The aforesaid statement of learned counsel for respondent No.1 is in consonance with legal position on the subject involved herein.

In view of statement made by learned counsel for respondent No.1 and as per legal position, let delivery of actual possession qua decreed $\frac{1}{2}$ portion of the suit land be delivered only after lawful partition between the parties. Till then, symbolic possession of the suit property be delivered to the decree holder.

Disposed of.

30.11.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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