

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

Civil-Revision-4896 of 2018
Date of Decision:21.08.2018

Milkha Singh (deceased) through his LRs and othersPetitioners

Vs.

Achhari (deceased) through her LRs and others ...Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Inderjit SharmaAdvocate,
for the petitioners.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioners challenge the order of the learned executing Court dated 07.10.2017 (a copy of which is annexed as Annexure P-11), by which fresh warrants of possession have been ordered to be issued, with the copy of a letter of the learned District Judge annexed therewith, vide which police help was to be provided on 27.10.2017, with a note to be given in the warrants that in case of non-execution thereof the concerned official responsible for such execution would put in appearance in person before the executing Court, to give reasons for such non-execution, as the decree holder had been in litigation for claiming possession only, even 30 years after the decree had been passed.

Learned counsel for the petitioners submits that the petitioners having been shown in the revenue records as *gair dakhildars*, they cannot be ousted from the land simply on the basis of the decree issued in favour of the decree holder on 18.11.1983, even though it eventually attained finality before this Court with dismissal of RSA-563-1984 and RSA-1039-1984,

vide judgment dated November 17, 2011, a copy of which is annexed as Annexure P-4 with the petition.

On specific query to learned counsel for the petitioners as to whether the petitioners are the legal heirs of the original judgment debtors or have entered the land as *gair dakhildars* or tenants subsequently, he very fairly does not deny, since that is a matter of record, that the petitioners are undoubtedly the legal heirs of the judgment debtors.

That being so, it is necessary to reproduce the operative part of the decree passed on 23.04.1982, which reads as follows:

“21. In view of the decision on the above issues, a preliminary decree is hereby passed for possession of the land measuring 77 Kanals 10 Marlas bearing Killas Nos.8/19, 20, 21, 22, 14/1, 2, 9, 13/1, 12/2, 21/19/2, 20/1 and 33/5/2, in favour of the plaintiff and against the defendants by redemption of the mortgage dated 31.5.1943 on payment of a sum of Rs.6420/- by the plaintiff. The plaintiff shall pay this amount or deposit in the Court within a period of one month from today. The plaintiff shall also be entitled to the costs of this suit from the contesting defendants no.1 to 4. The decree is ex parte-against the other defendants.

Decree-sheet be prepared accordingly and the case file be consigned to the records.”

Very obviously the preliminary decree passed was for possession of the land measuring 77 Kanals 10 Marlas, as fully described in the decree sheet.

It is not in doubt that the respondents decree holders have paid the sum of Rs.6,420/- as was required to be paid.

Consequently, the decree being one for possession and it having been upheld in first and second appeal, with no further litigation

thereafter, the attempt to subvert the decree even at this stage by raising the plea of the petitioners' being *gair dakhildars*, is wholly in order to try further delay execution thereof (by dispossession of the petitioners in favour of the decree holders).

If any such plea had to be raised by the petitioners, obviously it should have been raised (if not actually already raised) at the appropriate stage before the Courts that had passed the decree and had subsequently upheld it.

Learned counsel for the petitioners also relies upon a judgment of a co-ordinate Bench of this Court and that of the Karnataka High Court with regard to the rights of tenants and mortgagees (in **Mulk Raj vs. Sant Ram (dead) through LRs** 2010(3) RCR (Civil) 808 and **K.S.Srinivas vs. V. Ramkumar** 2004(4) RCR(Civil) 54, respectively). The said judgments are wholly inapplicable, they having decided on the rights of parties in appeals emanating from the civil suits filed, and not in execution proceedings, by which stage obviously the decrees passed in the civil suit have become wholly final.

Consequently, finding no merit in this petition, it is dismissed.

August 21, 2018

dharamvir/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	: YES/NO
Whether Reportable	: YES/NO