

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6624 of 2018(O&M)
Date of decision: October 01, 2018

Jagjit Kaur .. Petitioner
vs.
Union of India and others .. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr.Mansur Ali, Advocate for the petitioner.

Harinder Singh Sidhu, J.

Petitioner Jagjit Kaur through her LR Major Singh is judgment-debtor No.8 in the Execution Petition filed by the plaintiff- respondents No. 14 to 16.

This revision has been filed impugning the order dated 14.8.2018 of the Ld. Civil Judge (Junior Division), Hoshiarpur, whereby, two applications filed by the petitioner, one for appointment of Local Commissioner and the other for permission to remove the super-structure existing in the suit property comprised in Khasra No.1/16 situated in the Revenue Estate of Village Shergarh, Tehsil and District Hoshiarpur, have been dismissed.

Respondent Nos.14 to 16 had filed a civil suit for possession after removal of super structure existing on land measuring 4 Kanal 2 Marlas. The suit was dismissed by the Ld.Trial Court and the Ld. Lower Appellate Court. However, their Regular Second Appeal was allowed. The case of the petitioner is that he had purchased the property from Jeewan Dass and Shabil Dass – defendants in the aforesaid suit. The petitioner was respondent No. 8 in the Regular Second Appeal.

possession after removal of super structure, as such, the plaintiff- decree holder was only entitled to take possession after removal of super structure existing on the suit property. It was argued that the property was to be located by way of demarcation and, thereafter, time was to be given to the applicants to remove the super structure existing on the suit property. Before execution of the warrant of possession, it was to be ensured by the Executing Court that the super structure had been removed, but in the instant case, the warrants of possession have been issued without removal of the super structure. As the possession had been handed over to the decree holder without removal of the super structure, the value of the super structure was liable to be recovered from the decree holder. Alternatively, the super structure existing on the land was liable to be removed. It was stated that a big building existed at the suit property, which is conservatively valued at Rs.10,00,000/-. Hence, it was prayed that the petitioner be permitted to remove the super structure at his own risk.

The plaintiff- decree holders contended that the application was not maintainable as the petitioner was himself present at the time of delivery of possession and he had surrendered the possession of the property during the execution proceedings on 13.3.2010. No such objection was raised then.

The learned Court dismissed the applications holding that the original Execution Application had already been disposed of as satisfied and the possession of the suit property had been delivered to be decree holder on 13.3.2010 through Court. The judgment and decree in the RSA is dated 2.5.2007. The judgment debtors had sufficient time to remove the super structure before delivery of the property, but they failed to do so. As

possession was not handed over to the decree holder, he was constrained to file Execution Petition, which also remained pending for a considerable period, before possession was handed over to him. The decree holder recorded his satisfaction at the time of taking over possession of the suit property.

Ld. Counsel for the petitioner has argued that clearly as per the decree, the possession of the suit property was to be handed over after removal of super structure. That admittedly having not been done, his application was wrongly dismissed.

There is no merit in the aforesaid contention. As noted by the Court below, the judgment and decree in the RSA was dated 2.5.2007. It was open to the petitioner (judgment debtors) to remove the super structure before possession was delivered on 13.3.2010. Moreover, the possession was delivered in his presence whereupon, the Execution petition filed by the decree holder was disposed of as satisfied. By now, 8 years have passed since the delivery of possession to the decree holder. During this period, the decree holder may have made considerable improvements in the property. There is no justification, at this stage, to require the decree holder to remove the super structure.

There is no merit in the petition.

Dismissed.

October 01, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No