

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

CR-6949-2018 (O&M)

Date of Decision: 13.12.2018

YASHWANTI

.....Petitioner

Vs.

JORA SINGH & ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioner.

Mr. S.K. Hooda, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner has challenged the order dated 25.09.2018 passed by learned Additional Civil Judge (Senior Division), Gohana (Annexure P-1).

2. Notice of motion was issued on 12.10.2018 by passing the following order:-

“Learned counsel for the petitioner contends that vide order dated 22.03.2018 passed by Additional Civil Judge (Senior Division), Gohana, the objector-petitioner was not treated as a rank-trespasser, rather found to be in settled possession. Her possession was protected and the record was consigned. Thereafter, decree holder filed an application for restoration of the

execution on 02.04.2018. On 25.09.2018, an application was filed for issuance of warrants of possession and vide order of even date, prayer was granted without issuing any notice to the petitioner. The said order is being assailed herein.

Notice of motion for 18.01.2019.

In the meanwhile, status quo regarding possession over the suit property be maintained.”

3. Thereafter, Civil Miscellaneous application No. 24495-96-CII-2018 was filed by the respondent No.1 for preponing the date of hearing and for vacation of stay. Notice in the application was issued to learned counsel for the petitioner for 03.12.2018 and thereafter, the case was adjourned for today.

4. With the concurrence for the learned counsel for the parties I proceeded to take up the main case today. Perusal of the record would show that in the execution petition filed by the decree-holder, the Additional Civil Judge (Senior Division), Gohana vide judgment dated 22.03.2018 observed the following facts in the operating part of order.

“In view of the above discussion, the objection has no merit and it is dismissed. Since, possession of Yashwanti (objector) has been admitted by witnesses of the DH, her settled possession in my considered view should not be

disturbed by issuing warrant of possession in this case unless there are change of circumstances before decision of the suit between the parties on merit. Yashwanti cannot be treated to be a rank trespasser as she has purchased the suit land from other legal heirs of deceased Shish Ram. In these circumstances, file be consigned to the record-room after due compliance as nothing more remains to be done. Decree holder is at liberty to get restored the execution after decision of the pending suit between the parties to this execution or after change of circumstances”

5. It is clear that opportunity was given to the decree holder to file an application for restoration of execution on the basis of change in circumstances.

6. Learned counsel for the respondents submitted that in pursuance of the decree, sale deed was executed in favour of the decree-holder with the process of the Court. In an independent suit filed by the objector, challenging the decree in question, interim stay was declined on the basis of change in circumstances. The application for restoration of execution and issuance of warrant of possession was moved by the decree-holder. The impugned order was passed on 25.09.2018. A perusal of the impugned order would show that notice on the application was given to Sh. R.P. Mor, Advocate for the petitioner through Sh. V.A. Mor, Advocate who was present in

Court. The impugned order was passed on the same day and it could not be ascertained whether Mr. R.P. Mor, Advocate was duly informed by Sh. V.A. Mor, Advocate or not. Be that as it may, the Court is not only required to do justice on the basis of material on record, but the justice should appear to have been done.

7. Apparently the application filed on 25.09.2018 has been disposed of on the very same day in the manner as suggested in the order.

8. In view of the above circumstances of the case, I deem it appropriate to dispose of this civil revision by directing the executing Court to revisit the order by issuing lawful notice to both the parties in accordance with law and pass appropriate order preferably within three weeks from the date of receipt of certified copy of this order.

9. Petition stands disposed of accordingly.

December 13, 2018.
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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No