

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

**ESA No.38 of 2014 (O&M)
Date of decision : May 15, 2018**

Sukhwinder Singh

..... Appellant

Versus

Jai Krishan and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate for the appellant.

Mr. P.S. Guliani, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present execution second appeal is the order dated 02.04.2014 passed by learned Addl. District Judge, Patiala, vide which in an appeal filed by Jai Kishan, a third party against the order dated 08.10.2013 passed by the Executing Court, it was held that the issuance of warrants of possession for delivery of actual possession of the land in question affects the right of other co-owners like objector. They could move the Executing Court. The appeal was allowed and the order of the trial Court was set aside. The objections were allowed with the observations that only symbolic possession to the extent of 8 kanals, 16 marlas of land out of the entire property should be got delivered to the decree holder in the execution proceedings.

The background of the controversy is that Sukhwinder Singh, plaintiff-decree holder entered into an agreement of sale with Kesho Ram on 16.11.2005, vide which Kesho Ram agreed to sell his land measuring 176/2870½ marlas, equal to 8 kanals 16 marlas land. It was recorded in the agreement that the possession of specific khasra number i.e. 206//7(0-8), 3/2 (2-0), which are respectively 2 kanals 8 marlas and 0 kanal 8 marlas has been delivered to the vendee. The possession of the remaining land will be delivered at the time of execution of sale deed. The said suit was decreed ex parte by the learned Civil Judge (Jr. Divn.), Samana and the said decree became final. In consequence to the said decree, a sale deed dated 12.08.2009 was executed on behalf of the vendors by the Court, in which it is mentioned that possession of khasra nos.206//7 (0-8), 3/2 (2-0), in terms of the agreement dated 16.11.2005 was already delivered and the possession of remaining land is yet to be given by the Court.

Jai Krishan, who is one of co-sharers in the entire land and happens to be brother of Kesho Ram filed the objections before the Executing Court, stating that the area of said khasra no.206//7 (0-8), 3/2 (2-0) i.e 2 kanals, 8 marlas is in peacefull possession of the objector. It is a commercial land within the municipal limits.

It was further stated by the objector that he has raised loan on khasra no. 206//3, 4 and 187//24 and land is yet to be redeemed. In short, the objector claimed that he is in possession of khasra number, the possession of which is recorded to have been delivered to the vendee in the agreement. The objections were dismissed by the trial Court and allowed by the lower appellate Court.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out from the lower court record that the vendor had agreed to sell his share in the entire land equal to 8 kanals 16 marlas. It was recorded in the agreement that he has delivered the possession of said two khasra numbers to the vendee and possession of the remaining land will be delivered. It was on the assumption that the vendor is in possession of the said two khasra numbers i.e. 206//7 (0-8), 3/2 (2-0). The said suit was decreed.

Now, the question is regarding the remaining land 6 kanals 8 marlas. Since it was sale of share only, only warrants of symbolic possession are to be issued.

The moot question in the present execution is as to whether the warrants of possession of land measuring 2 kanals 8 marlas , the possession of which has been recorded to be delivered to the vendee are required to be issued by the Court or not?

I find the reply in negative.

In the agreement, it is specifically recorded that the possession of said khasra numbers i.e. 206//7 (0-8), 3/2 (2-0) has been delivered to the vendee. It would be question of fact that whether vendor was in exclusive possession of said khasra numbers to the exclusion of other co-sharers or not?

If the possession was delivered to the vendee, he can protect it and if the possession was not delivered to him, the warrants of actual possession of the said two khasra numbers cannot be issued by the Court for

the simple reason that as per the recital of the agreement and the sale deed, the possession of said khasra number is already with the vendee. If the vendee feels that he is in possession of the said khasra numbers, he can always take appropriate proceedings to protect his possession. However, in the present execution, the warrants of actual possession of said khasra numbers cannot be issued.

In view of the matter, it is held that in the execution proceedings, the Executing Court shall issue warrants of symbolic possession of the share of the vendor equal to 6 kanals 8 marlas and for 2 kanals 8 marlas. Since the vendee claimed that the possession of specific khasra numbers was delivered to him, only symbolic warrants of possession will be issued and if the vendee feels that he is in possession and the possession is threatened, he can always seek appropriate remedy before the appropriate Forum.

Needless to say that the objector shall also have the same remedy available to him, if he claims that he is in possession. In the said suit, the factum of actual possession will be adjudicated upon.

It is further directed that if any of the parties institute partition proceedings before the Court, the said Court shall expeditiously dispose of the said partition proceedings, preferably within six months,

As such, the present appeal is disposed of. Since the main appeal has been disposed of, therefore, the pending application, if any, also stands disposed of.

May 15, 2018

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No

(KULDIP SINGH)
JUDGE