

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Execution Second Appeal-27-2015 (O&M)

Date of decision: 02.07.2018

Amar Tyres Pvt. Ltd.

.....Appellant

versus

Amrik Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Animesh Sharma, Advocate for the appellant
None for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Impugned in the present Execution Second Appeal is the order dated 21.2.2015, passed by learned Civil Judge (Junior Division), Chandigarh, whereby in the execution proceedings, objections filed by the present petitioner were dismissed. Also impugned is the judgment dated 30.3.2015 passed by learned Additional District Judge, Chandigarh, vide which, appeal against the said order was dismissed.

In short, the background of the case is that Amrik Singh, Decree Holder filed a suit against one K.S.Sujlana for mandatory injunction directing him to open the locks, welding put up on the premises of plaintiff at Plot No.44, Industrial Area, Phase-II, Chandigarh. In the said suit, defendant did not appear and was proceeded against ex-parte. Claim of the Decree Holder, Amrik Singh in the said suit was that he is lease holder of property shed no.2 Ground Floor, Industrial Area, Phase-II, Chandigarh. It was further claimed that the Estate Officer has transferred the property in

the name of Harminder Kaur. The lease deed was signed by him with Harminder Kaur and registered on 11.5.2004. Defendant forcibly entered the said premises on 1.11.2004 and locked the same. He also welded the main gate from the outside. Suit was ex-parte decreed and following relief was granted:-

Accordingly, suit of the plaintiff for mandatory injunction is exparte allowed with costs directing the defendant to open the locks/ welding put up on the suit property within two months from the date of this order.

It is to be noted here that though the plaintiff had claimed that defendant forcibly entered the property, he did not pray for decree for possession. In the said suit, owner Mohinder Kaur was not made party.

During execution proceedings, learned Civil Judge (Junior Division), Chandigarh, issued warrants of possession on 22.4.2015, directing the delivery of possession to the Decree Holder after removing the lock and welding. Learned counsel for the petitioner has informed this Court that in pursuant to the said warrants, possession was delivered to the Decree Holder.

The petitioner Amar Tyres Pvt. Ltd. has filed objections before the Executing Court on 10.4.2009, stating that Amar Tyres Pvt. Ltd. is a company registered under the Companies Act, 1956 and is in possession of the suit property. Therefore, decree dated 10.12.2007 cannot be executed against the objector. The objector is neither owner nor licensor of the portion in dispute. It was stated that Amrik Precision Die Works had taken the disputed portion of the said property on lease from Amar Tyres Pvt. Ltd. through licence agreement dated 1.8.2001. The said Amar Tyres Pvt. Ltd. was not impleaded as party in the said suit. The suit for mandatory

injunction was not maintainable, as in case of dispossession, only suit for possession is maintainable.

In reply Decree Holder denied said assertions.

From the pleadings, following issues were framed:-

- 1. Whether the objector is owner and licensor of the premises?
OPO*
- 2. Whether the property in question is in possession of M/s
Amrik Precision and Die Works as a licence under the
present objector? OPO*
- 3. Relief.*

The said objections have been dismissed.

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

None appeared for respondent no.1. Therefore, his case has been considered. Respondent no.2 was proceeded against ex-parte.

A perusal of the decree reproduced above shows that exparte decree was passed against K.S.Sujlana, directing him to open the locks and welding put on the suit property within two months from the date of the order. The said decree is binding on K.S.Sujlana only in his personal capacity. Therefore, by way of execution, only locks and welding on the suit property as put up by K.S.Sujlana were to be removed. No decree for possession was passed. Therefore, the trial Court erred in issuing warrants of possession dated 22.4.2015, taking it to be decree for possession and delivering the possession to Decree Holder, Amrik Singh. The issuance of warrants of possession amounts to going beyond decree. The trial Court had recorded evidence of parties in this case. It comes out that the property originally belongs to one Partap Singh. The present petitioner claimed that the same was given to the petitioner company as equity.

From the statement of Mohinder Partap Singh (OW1), it comes out that the petitioner company has Capt. K.S.Sujlana as one of the Directors. Other Directors are Jasminer Sujlana and Mohinder Partap Singh. K.S.Sujlana is husband of Jasminer Sujlana, who happens to be daughter of Mohinder Partap Singh (OW1). The disputed property is stated to have been transferred in the name of Harminder Kaur. The petitioner claims that it had given the property on licence to Amrik Precision Die Makers through its sole proprietor Amrik Singh. Amrik Singh is a Decree Holder in this case. There is a lease deed dated 7.5.2004 between Harminder Kaur and Amrik Precision Die Makers through its sole proprietor Amrik Singh.

A perusal of file shows that previously Amrik Precision Die Makers through its proprietor Amrik Singh and two others filed Interpleader suit under Order XXXV Rules 1 and 2 CPC 1908 and for permanent injunction in which it was claimed that both the defendants i.e. Amar Tyres Pvt. Ltd. and Harminder Kaur are claiming right to collect rent. Suit was filed on 23.07.2004.

It is apparent that there is a dispute regarding possession between Harminder Kaur and present petitioner company. Cross examination of Amrik Singh Decree Holder shows that he claims to be a tenant in the said property since 1989. He remained tenant of Amar Tyres Pvt. Ltd. in the said property for 2 ½ years as per licence agreement dated 1.8.2001. He had been paying rent to Amar Tyres Pvt. Ltd. against receipt through cheques @ Rs.7000/- per month. He admitted that he filed civil Suit against Amar Tyres Pvt. Ltd. and Harminder Kaur, which was decided by the Court of learned Civil Judge (Junior Division), Chandigarh vide

judgment dated 16.10.2004, a copy of which is Ex.OH4. He claimed that he vacated premises in March 2004 and handed the keys to Amar Tyres Pvt. Ltd. who were the landlord. However, he stated that he cannot show any document to show that possession was delivered to Amar Tyres Pvt. Ltd. He also stated that he is ready to make payment of rent either to Amar Tyres Pvt. Ltd. or to Harminder Kaur. He claimed his possession as a tenant. He claimed that he entered into the lease agreement dated 11.5.2004 with Harminder Kaur Garcha. Therefore, it is clear from the admission of Decree Holder himself that earlier, he was in possession of disputed property as a tenant under Amar Tyres Pvt. Ltd. petitioner. But he claims that he had vacated the premises in the year March 2004 and then entered lease agreement with Harminder Kaur registered owner on 11.5.2004. He has no proof that he has handed over the possession to Amar Tyres Pvt. Ltd. It is not known how possession of disputed property was transferred from Amar Tyres Pvt. Ltd. to Harminder Kaur. Neither Amar Tyres Pvt. Ltd. nor Harminder Kaur were made party to the suit for mandatory injunction, which was only filed against K.S.Sujlana, one of the Directors of the petitioner company without disclosing as to whether he is acting as a Director or in personal capacity. Mandatory injunction was only to open lock and welding and not deliver the possession to the petitioner.

It being so, the impugned orders are patently illegal. The Executing Court erred in issuing warrants of possession and delivering possession to the Decree Holder. At the most, only lock on the gate and welding were to be opened. It was stated by Decree Holder in the said suit that he has been dispossessed. Therefore, in the execution of the present decree, warrants of possession could not be issued. The issuance of

warrants of possession shows that petitioner has been dispossessed.

Hence, present Execution Second Appeal is allowed. Impugned order dated 21.2.2015, passed by learned Civil Judge (Junior Division), Chandigarh and judgment dated 30.3.2015 passed by learned Additional District Judge, Chandigarh are hereby set aside. The objections are allowed. The trial Court is directed to deliver the possession back to the present petitioner, by way of restitution, from whom the possession was taken in pursuant to the warrants of possession, referred to above.

Since the main case has been decided, therefore, the pending CM, if any, also stands disposed of.

02.07.2018

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:	Yes
Whether Reportable:	No