

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

Shiksha and anotherPetitioners

Chitrander Kumar and othersRespondents

Present: Mr. Naresh Kumar Bansal, Advocate
for the petitioners.

Mr. D.C. Mittal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 30.08.2017 and orders dated 03.09.2016 attached as Annexures P-2 and P-3 with the revision petition, vide which the salary of legal heirs of deceased judgment debtor was attached. Petitioners have also challenged the order dated 22.01.2018 passed by the lower Appellate Court vide which the appeal was dismissed.

[2]. Petitioners being judgment debtors No.2 and 3 have assailed the aforesaid orders on the ground that the salaries of the petitioners were attached in execution filed against the legal heirs of deceased Smt. Sumitra.

[3]. Learned counsel for the petitioners submitted that mother of the petitioners was in possession of the house. Respondent No.1 filed a suit for possession against Smt. Sumitra, who was living in the house along with younger son namely Dinesh Kumar @ Binesh Kumar son of Baleshar. During pendency of the suit, Smt. Sumitra died and legal heirs i.e. two sons and two daughters (petitioners) were brought on record. The suit was decreed on 24.12.2014 in favour of the respondent-decree holder by the trial Court and the judgment debtors were directed to hand over the possession within a period of two months and to pay Rs.1500/- p.m. as *mesne* profits from 03.10.2003 till possession is delivered to the decree holder along with interest @ 6% per annum.

[4]. Learned counsel further submitted that execution was filed on 26.03.2015. Petitioners were married and were living in their in-laws house for more than 35 years. They have not inherited anything from the property of their mother and, therefore, they are not personally liable to answer the claim of *mesne* profits. The possession of the house has already been delivered to the respondent-decree holder on 28.03.2016. Learned counsel contended that in view of Section 50(2) CPC, the legal representatives shall be liable to pay only to the extent of the property of the deceased which has come to their hand

and has not been duly disposed of.

[5]. Per contra, learned counsel for the respondent/decreed holder submitted that after the death of Smt. Sumitra, the petitioners along with their brothers were also brought on record as legal representatives, who contested the suit to tooth and nail. Even after passing of the decree by the trial Court, they unsuccessfully contested the appeal and, therefore, they remained in possession of the property for which *mesne* profits are required to be paid by them. The case is not covered under Section 50(2) CPC, rather it is covered under Section 52 CPC which provides enforcement of decree against legal representatives, when the decree is passed against a party as a legal representative of deceased person and the decree is for payment of money out of property of the deceased, it may be executed by attachment or sale of any such property. In both the aforesaid provisions, reference of property of the deceased finds mention.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. Vide order dated 31.07.2018, it was observed by this Court that in order to seek protection under Section 50(2) CPC, the petitioners were required to file specific affidavit to show that they had not inherited any moveable and immoveable property

of the deceased Sumitra. In compliance of the same, the petitioners have filed their affidavit dated 16.09.2018 executed by them vide CM No.20436-CII of 2018. The affidavits were allowed to be taken on record by this Court on 17.11.2018.

[8]. Evidently, the possession of the property has already been delivered to the decree holder on 28.03.2016. The trial Court decreed the suit after the legal representatives of deceased Smt. Sumitra were brought on record as necessary parties. Petitioners have contested the suit by filing written statement stating that they are residing as owners in the suit property for the last more than 27 years being close relatives of the deceased allottee of the house in dispute and they contested the case on merits. After due contest the decree was passed by the trial Court, whereby defendants were directed to hand over the possession of the demised premises to the decree holder within a period of two months from the date of judgment and decree and the plaintiff/decreed holder was held entitled to recover the *mesne* profits @ Rs.1500/- per month from 03.10.2003 till possession is delivered to the decree holder along with interest @ 6% per annum.

[9]. Petitioners being the legal representatives of Smt. Sumitra also preferred an appeal against the judgment and decree of the trial Court. Since the petitioners were impleaded

as legal representatives before the decree of the trial Court, therefore, in view of stand taken by them in the written statement, filing of first appeal after the decree of the trial Court would suggest that petitioners are the contesting parties and the decree was passed against them to answer the damages/*mesne* profits @ Rs.1500/- per month from 03.10.2003 till possession is delivered along with interest @ 6% per annum. In view of the stand taken by the petitioners in the written statement, I am of the view that the petitioners cannot claim the protection of Section 50(2) CPC which otherwise is not attracted as the deceased Smt. Sumitra died during pendency fo the suit and the petitioners were duly brought on record as her legal representatives.

[10]. For the reasons recorded hereinabove, I see no justification to interfere in this revision petition. This revision petition is accordingly dismissed.

December 05, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No