

CR No.3506 of 2018(O&M)
Date of Decision: 11.12.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Som Nath Saini, Advocate
for the caveators/respondents No.1 to 3.

CM No.25218-CII of 2019

Allowed as prayed.

Accompanying document is taken on record.

Main case

[1]. Petitioners have preferred this revision petition against the order dated 29.01.2018 passed by Civil Judge (Senior Division), Patiala, whereby the executing Court allowed the application of the judgment debtor(s) for revival of the execution

petition by directing the decree holder(s) to pay compensation to the tune of Rs.9.9 lacs as assessed by the Field Kanungo on account of Ziri crop harvested by the decree holder(s) at the time of taking possession of the land and to pay Rs.1 lac each on account of two motor connections along with kothas and also to make payment as assessed by AW-4 and AW-6 on account of compensation for fish farm and 500 eucalyptus trees as per assessment of the aforesaid witnesses.

[2]. Petitioners/plaintiffs filed a suit for declaration and possession on the basis of sale deed dated 17.03.1994, which was executed by legal representatives of original allottee Jindu Ram. The said suit was decreed vide judgment and decree dated 24.08.2002 passed by the trial Court. Judgment debtors therein remained unsuccessful in the appeal before the Lower Appellate Court, which was dismissed vide judgment and decree dated 15.05.2004. Even RSA No.3558 of 2004 was dismissed by the High Court on 24.09.2008. The execution petition was filed by the decree holders/petitioners, which was contested by the judgment debtors. During pendency of the execution petition, a report in respect of standing crop was prepared by the office Kanungo and possession was delivered to the decree holders. Thereafter, decree holders withdrew the execution on 20.11.2014 being fully satisfied.

[3]. On 12.12.2014, judgment debtors filed an application before the executing Court by relying upon a report of the Field Kanungo for revival of execution and restoration of possession. The said application has been allowed vide the impugned order.

[4]. Learned counsel for the caveators/respondents No.1 to 3 submitted that the sale deed dated 17.03.1994 and decree dated 24.08.2002 were challenged by the present respondents No.1 to 3 in an independent suit and the same has been decreed by the trial Court vide judgment and decree dated 30.01.2018. Judgment and decree dated 24.08.2002 passed by the trial Court and sale deed dated 17.03.1994 were set aside. An appeal preferred by the present petitioners is pending before the Lower Appellate Court, in which prayer in terms of Order 39 Rules 1 and 2 CPC has been declined.

[5]. Vide order dated 01.06.2018 passed by this Court, an intimation was required to be furnished by respondents No.1 to 3 as to whether the executing Court has ever assessed valuation of standing crop, standing trees and fish farming and whether any such assessment was made by the revenue officials with the leave of the Court.

[6]. In compliance thereof, learned counsel for respondents No.1 to 3 placed reliance upon revenue instructions and provisions in terms of land record manual to show that if the

decree is silent about such requirement, still the revenue officials can assess the value of the standing crop, standing trees and fish farming at the time of delivery of possession. Learned counsel further placed reliance upon Chapter 23 of High Court Rules and Orders for the purpose of reference to Clause 5 of para No.25 i.e. execution by delivery of immovable property which reads as under:-

“(v) When a decree is for giving possession of agricultural land, the date on which possession is to be delivered should always be specified in the decree along with necessary order regarding standing crop, if any, on the land, but if it has not been done in the decree, it should be done in the warrant of possession to be sent to the Collector by the Executing Court. If it is not so done, the Collector should refer the matter back to the Executing Court for necessary instructions. If crop is sown by the judgment debtor after the passing of the decree, possession of the land with standing crop may be got delivered to the decree-holder after he deposits, for payment to the judgment-debtor, the value of the standing crop to be assessed by the concerned revenue official.”

[7]. In compliance of the orders dated 25.02.2019 and 22.10.2019, learned counsel for the petitioners placed copy of *rapat* dated 05.11.2014 which shows that in compliance of the orders of Tehsildar, Patwari and Naib Tehsildar, Dudan Sadan, Field Kanungo went to the spot in order to deliver the

possession of the land with the police help in view of order dated 29.10.2014 passed by Civil Judge (Senior Division), Patiala. In para No.6 of the aforesaid report, the Field Kanungo, Dudan Sadan has reported that there was a fish farm in the land measuring 10 kanals 15 marlas and in 2 kanals 4 marlas, Bajra Chara was there which had already been cut by the judgment debtor(s). Rest of 192 kanals 14 marlas out of 24 acres, Ziri Basmati 30 no. crop was standing. Around this area, about 10-15 feet of length eucalyptus trees were standing which were about 500 in numbers. Apart from this, two motor sheds and two electric motors/tubewells were there, compensation of which was to be assessed separately. The delivery of possession was done and the copy was sent to the concerned quarter. The aforesaid recital in respect of computation of compensation separately has necessary consequence.

[8]. Learned counsel for the petitioners vehemently submitted that vide report dated 10.11.2014, compensation to the tune of Rs.9,90,000/- was allegedly assessed and the petitioners were directed to deposit the same by 17.11.2014. The said report was made by Khushwinder Kumar, Field Kanungo. Learned counsel raised serious dispute with regard to authenticity of the aforesaid report dated 10.11.2014 as no notice was ever served upon the petitioners while assessing the

aforesaid amount of Rs.9,90,000/-.

[9]. After delivery of possession on 05.11.2014, the petitioners got the execution dismissed as withdrawn as the alleged report dated 10.11.2014 was never placed on record upto 20.11.2014. The application for revival of execution was filed on 12.12.2014.

[10]. According to the learned counsel for the caveators/respondents No.1 to 3, the aforesaid report dated 10.11.2014 was sent to the Court and the same was prepared in continuation of proceedings of possession dated 05.11.2014, wherein it was so recorded that the compensation will be assessed separately.

[11]. The aforesaid Khushwinder Kumar, Office Kanungo has appeared as AW-1. His statement was recorded on 25.07.2016 by the Civil Judge (Senior Division). Examination-in-chief is conspicuously silent about the preparation of rapat dated 10.11.2014 in compliance of the observations made in the report dated 05.11.2014.

[12]. For ready reference, examination-in-chief and cross-examination of AW 1 Khushwinder Kumar, Officer Kanungo are reproduced hereasunder:-

“AW-1 Statement of Khushwinder Kumar, Office Kanungo, Nabha

On S.A.

In the month of November 2014 I was posted as field Kanungo Dudhan Sadhan. On 31.10.2014 I received a letter from naib tehsildar Dudhan Sadhan to took the possession of agricultural land, copy of letter is Ex.AW1/A. On the basis of that application I forward an envelope of letter containing the particulars of the land to be taken into possession to the concerned Incharge PS Julkan attested copy of the same is Ex.AW1/B and endorsement is at point A.

On 05.11.2014 in the presence of officials mentioned in serial no.1 to 11 of Ex.AW1/C along with about 200 police officials I took the possession of land described in Ex.AW1/C. I did the whole act as per the instructions of the then Executive Magistrate Sh. Rajbinder Singh Dhanoa. I have not moved any application for assistance of any Executive Magistrate at the spot. I did not or my officials did not try to get assess the value of standing trees over the land. I or my officials did not try to get the valuation of fish farm, two kothas, two motors etc. standing over the land. I or my officials did not order DH to deposit the amount of paddy crop to deposit in the revenue office Patiala for before delivering possession. I cannot comment whether there is a duty of mine to get deposit the value of standing crop before delivering the possession to DH or to get assess the value of articles such as tree, kothas of motor, tubewell, first farm etc. I do not know whether till date DH has deposited any amount in the Court or not. I do not have any knowledge whether till date assessment of standing trees, fish farm, two tubewell, two kothas etc installed over the land as

mentioned in Ex.AW1/C has been done or not. I or my official did not make any effort to get assess the value of above mentioned articles or to deposit the value of standing crop in the Court or revenue earth chequer again said I instructed as per my report Ex.AW1/D to deposit the assessed amount of paddy standing over the land taken into possession to be deposit in the Court till 17.11.2014. I do not know whether till date DH has deposited the amount as instructed by me in the Court or not.

XXXXXXXXXXXXX deferred.

RO & AC

Raman Kumar
CJ(SD)/25.7.16”

“AW 1 Statement of Khushwinder Kumar, Office Kanungo, Nabha recalled for cross-examination.

On SA.

XXXXXXXXXXXXX by Sh. K.S. Pruthi, Advocate counsel for decree holder.

The documents exhibited in the chief are objected to on the ground of mode of proof. The possession of the land was taken from LRs of Dalip Singh namely Lakhwinder Singh etc and the possession was delivered to Sukhbir Singh and others who were decree holders. I cannot tell for how long Lakhwinder Singh etc remained in possession of the land in dispute. I did not counted the trees standing in the land in dispute. Nor I can tell the age and other specification of the trees even I cannot tell who planted the trees in the land in dispute. There was a fist pond in the land in dispute. I have already reported in my report

about the fist in existence in the pond. I do not know whether there were fist on the pond or not for which I have already made a report regarding the same. There are Government instructions to report about the value of the standing crop and to instruct to deposit the amount in the treasury. It is wrong to suggest that I have deposed falsely.

RO&AC

Raman Kumar
CJ(SD)17.10.2016
Patiala”

[13]. Perusal of the aforesaid statement of Khushwinder Kumar, Office Kanungo, Nabha would show that nothing has been recorded in the context of assessment of compensation in accordance with law, for which opportunity was required to be given to the petitioners. Similar assessments were made in respect of other components also.

[14]. Learned counsel for the caveators/respondents No.1 to 3 by placing reliance upon Clause 5, para No.25 of Chapter 23 of High Courts Rules and Orders further contended that the decree was silent about the aforesaid assessment, date of delivery of possession, standing crop and in the warrants of possession as well, there is no such mention, therefore, warrants of possession have to be sent to the Collector by the executing Court and in the absence of such recitals, the Collector should have referred the matter back to the executing

Court for necessary instructions.

[15]. Perusal of the aforesaid para would show that there has to be specific mention about delivery of possession of agricultural land and date on which the possession is to be delivered along with necessary order regarding standing crop (if any). If there is no such mention in the decree, then it has to be recited in the warrants of possession to be sent to the Collector by the executing Court. Having not done so, the Collector should have referred the same back to the executing Court for necessary instructions.

[16]. The aforesaid instructions clearly helps the case of the petitioners. There was no such mention in the decree, nor there was any such mention in the warrants of possession. In such eventuality, the assessment with regard to compensation was required to be done at least by giving notice to the petitioners. To that extent, I agree with the contentions raised by learned counsel for the petitioners.

[17]. For the reasons recorded hereinabove, I deem it appropriate to remand this case to the executing Court with a direction to get the assessment of the compensation done afresh after giving notice to the petitioners and thereafter, proceed to pass afresh order in accordance with law.

[18]. In the light of observations made hereinabove,

impugned order is set aside. Consequently, this revision petition is allowed and the case is remanded to the executing Court for fresh decision in accordance with law.

11.12.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No