

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

**CR No.421 of 2018(O&M)
Date of Decision: 02.12.2019**

Gurvinder Singh

.....Petitioner

Versus

Kala Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. J.S. Cooner, Advocate
for the petitioner.

Mr. I.S. Pabla, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Challenge is to the orders dated 11.08.2017 and 08.12.2017 passed by Civil Judge (Junior Division), Kalka, vide which application for providing police help to the respondent(s) was allowed and the respondent(s) was permitted to withdraw the application with a permission to file fresh application, if need arises.

[2]. Vide the impugned proceedings, decree holder/respondent was allowed to take possession of the suit property with the police help on the premise that the execution

has been filed in judgment and decree arising out of suit for permanent injunction dated 06.07.2013. Appeal against the said judgment and decree has been dismissed by the Lower Appellate Court on 05.07.2014. Decree holder alleged that the judgment debtor was causing illegal interference in the possession of the suit land.

[3]. Trial Court in order to maintain peace and harmony over the suit property and to avoid any act of interference and disturbance, allowed the police help vide order dated 11.08.2017. The order was passed just to avoid multiple litigation in future. Thereafter, vide order dated 08.12.2017, statement of Amrik Kaur was recorded in which she has stated that the judgment debtor be directed not to interfere during the process of getting possession by the decree holder with the police help. She also prayed for withdrawal of the application with a permission to file fresh application, if need arises in future. After recording her statement, the police was directed to accompany Amrik Kaur in order to get possession of the property. It was ordered that the police help be provided to the decree holder in order to restore peaceful possession in the presence of kanungo and halqa patwari. In order to avoid any controversy in future, decree holder was allowed to withdraw the petition as well with the aforesaid condition to file fresh

application, if need arises in future.

[4]. I have heard learned counsel for the parties.

[5]. Learned counsel for the petitioner submitted that in a suit for permanent injunction, the execution could have been filed only under Order 21 Rule 32 CPC. In view of averments made in the execution, there is no allegation of dispossession of the respondent(s)/decree holder in any manner. Executing Court cannot order for police help, particularly when there is no overt-act done by the judgment debtor in terms of violation of decree at any particular time, place and manner. In a decree for permanent injunction, possession is sought to be given that too by police help. Petitioner has already filed a suit for partition and permanent injunction on the basis of joint status of the parties as co-sharers.

[6]. A preliminary decree for separate possession by way of partition has already been passed by the trial Court on 16.01.2017 and the proceedings are pending for passing of final decree. The execution filed by the decree holder/respondent(s) is conspicuously silent with regard to alleged violation of the decree for permanent injunction in terms of time, place and manner of dispossession of the decree holder.

[7]. It is a settled principle of law that inherent jurisdiction of the High Court can be resorted to in case, violation of decree is

writ large on the face of the record. For granting ad interim injunction, the power must be exercised only in exceptional circumstances and the police help cannot be resorted to in ordinary circumstances. Only exceptional circumstances are those circumstances for which the Civil Code has not provided any procedure. For granting *ad interim* mandatory injunction, the Court is required to be satisfied with highest degree of satisfaction. Such power is well within the jurisdiction of the Court to get the same implemented by police help, if the same is violated by the wrongdoer and the defendants cannot gain advantage in derogation of rights of the parties, who were litigating originally, but the factum of violation has to be brought on record in terms of date, place and manner in which the violation was committed by the judgment debtor.

[8]. In the instant case, parties are co-sharers and they have constructed their houses. In **Meera Chauhan Vs. Harsh Bishnoi and another, 2007(1) RCR (Civil) 597** and **Mohd. Mehtab Khan and others Vs. Khushunma Ibrahim and others, AIR 2003 Supreme Court 1099**, it was held that inherent power of the Court can be utilized in exceptional circumstances and police help can be provided in case, the violation of the decree is writ large on the face of the record.

[9]. In the instant case, the trial Court has provided the

police help at the asking of the respondent(s)/decree holder without adhering to any violation committed by the judgment debtor in terms of date, time, place and manner of such violation. Secondly, the Court has not taken into consideration, preliminary decree in a suit for partition filed by the judgment debtor(s). All these factors would give rise to question the illegality of impugned orders passed by the trial Court.

[10]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned orders and remand this case to the trial Court.

[11]. In view of above, this revision petition is allowed. The present case is remanded to the trial Court with a direction to ascertain the factum of violation committed by the judgment debtor(s) in terms of date, time, place and manner of disobedience in accordance with law for which both the parties may lead evidence. On determination of such issue, the executing Court would be at liberty to record its highest degree of satisfaction, if at all, police help is required to be given to the decree holder in accordance with law.

02.12.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No