

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR no.5522 of 2014

Date of Decision: 29.01.2019

Rattanjit

...Petitioner

versus

Amarjeet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R.D. Bawa, Advocate
for the petitioner.

Mr. G. S. Nagra, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this petition, the petitioner has challenged the judgment and order of the learned Civil Judge (Junior Division), Batala, dismissing her application filed under Order 21 Rule 32 of the Code of Civil Procedure, seeking enforcement of the judgment and decree dated 05.12.1996 issued in favour of the petitioners' father Hazoor Singh, in Civil Suit no.59 of 15.09.1990, titled as Hazoor Singh v. Amarjit Singh and others.

The application was filed by Hazoor Singh himself, during the pendency of which he obviously passed away, (thereafter being represented by the present petitioner, i.e. his daughter, before the execution court).

[It is to be noticed that the petitioners' father has at different places being referred to as Hazoor Singh son of Bhan Singh and at other places as Hazoor Singh son of Bhan Singh, with there otherwise being no controversy on his identity. As such, he is being referred to as Hazoor Singh because that is his name given in the memo of parties before this court].

2. As per the application, when Hazoor Singh alongwith his son-in-law Kuldip Singh were present on their fields on 30.06.2006, the respondent-judgment debtors forcibly entered the fields on a tractor trolly and destroyed the standing crops, also threatening Hazoor Singh and Kuldip Singh, when they tried to resist.

Hence, in the application, the relief sought was that the decree passed by the civil court on 05.12.1996 be executed by either sending the judgment debtors to civil imprisonment or by attachment of their properties. The said decree was one perpetually restraining the respondent- judgment debtors from interfering in the plaintiff- decree holders' possession of the suit land.

3. Upon notice issued by the execution court to the respondent judgment debtors, they denied the entire story of the decree holder, and contended that the application had been filed only to harass them.

4. From the pleadings of the parties, that court framed the following issues:-

- “1. Whether respondents have violated the court order and proceedings for the contempt of court be initiated against them as alleged? OPA
2. Whether application is not maintainable? OPR
3. Relief.”

The applicant/decrece holder examined his son-in-law Kuldip Singh as AW1 and closed his evidence after tendering some documents, with the respondents having examined one Gurpreet Singh as RW1 and respondent no.2 Hardyal Singh as RW2, also tendering some documents by way of evidence.

5. Upon appraising the evidence, the learned execution court found

that though AW1 Kuldeep Singh had testified in terms of the averments made in the application, however, in cross-examination he had admitted that he was a Government employee and was on duty on the day of occurrence, with his place of employment being 20/25 kms away from the place of occurrence.

He also admitted that the distance between his place of work, i.e. Batala and Fatehgarh Churian was about 25 kms, with the time of occurrence given to be 5:30 p.m. on 30.10.2006.

6. RW1, Gurpreet Singh, is stated to have supported the stand of the respondents in the reply, but did not turn up for cross-examination.

Respondent no.2, Hardy Singh, as RW2 also supported the version given in his reply; and in cross-examination, while denying that any occurrence took place on October 30, 2006, however admitted that the name of Hazoor Singh was mentioned in the column of the record of rights (*jamabandi*) and further, that Kuldeep Singh AW1 was the son-in-law of Hazoor Singh deceased, with the present petitioner (Rattanjeet) and Gurmejit Kaur being his legal representatives.

By way of documentary evidence, the respondents are stated to have relied upon an order passed by the Financial Commissioner on 20.12.2007, certified copies of *jamabandies* for the years 2001-02, 2006-07 and 2011-12, as also some *Khasra Girdawaries* (annual revenue records).

7. The learned execution court first recorded a finding that though the judgment and decree dated 05.12.1996 was to the effect that the respondents would not interfere in the lawful possession of the decree holder over the suit property, however the decree holder had not stated anything with regard to actual enforcement of the judgment and had only stated that the respondents had destroyed the standing crops thereby violating the order of

the learned trial court.

Hence, it was held that no case under Order 21 Rule 32 CPC was made out, especially as the application simply mentioned the date of occurrence to be 30.10.2006, with no time given as to when it took place, thereby creating a doubt in the entire story of the applicant. Further, in his cross-examination AW1 also admitted that he was a Government employee who was on duty on the date of occurrence, with such place of duty being 20/25 kms away (as already noticed).

It therefore recorded that it being 'winter season' (actually 30.10.2006), it was not possible to reach the place of occurrence after office hours at the time when the occurrence took place, further putting a question mark on whether the occurrence actually took place or not.

Thereafter, it was also found by the execution court that nowhere had the respondent judgment holders claimed that they were in possession of the suit land and consequently, no case for either their civil imprisonment, or attachment of their property, was made out.

8. On the maintainability of the application, i.e. issue no.2, it was held that it was not proved that there was any violation of the judgment and decree dated 05.12.1996 and consequently, the said issue was also decided against the applicant decree holder.

The application was consequently dismissed.

9. This petition having been filed against that order dated 10.03.2014, eventually notice of motion was issued on 01.10.2015, after which the matter is seen to have remained pending due to written requests for adjournment made by one side or the other.

10. Mr. Bawa, learned counsel for the petitioner, submitted before

this court that once the peaceful possession of the petitioners' father (decree holder) over the suit property, was disturbed by the respondent judgment debtors, it was very obvious that the decree issued by the trial court had been violated, and consequently, the execution court wholly erred in not appreciating that fact, whereas it actually should have either attached the property of the respondents, or sent them to civil imprisonment.

He further submitted that in the civil suit decided on 05.12.1996, it was firstly held that the suit land was not *shamlat deh* of the village and thereafter it was also found that the decree holder was a tenant of the Punjab Wakf Board, who was in possession of the suit land and had been duly paying rent to the Board.

He next submitted that respondent no.1, Amarjeet Singh, had also instituted a separate civil suit, bearing no.188 of 26.04.1994, titled as Amarjeet Singh v. Punjab Wakf Board and Hazoor Singh, claiming to be the owner in possession of the suit land, which suit was also dismissed vide a judgment and decree dated 23.01.2002, with the father of the present petitioner, Hazoor Singh, held to be in possession as a tenant.

11. Thus, Mr. Bawa submitted, that with the lawful possession of the petitioners' father duly proved in two civil suits, the action of the respondents, simply on the basis of muscle power, deserves to be punished in the manner provided under Order 21 Rule 32 of the CPC, they having violated the decree of permanent injunction issued against them and in favour of the decree holder.

Mr. Bawa also relied upon a judgment of a co-ordinate Bench of this court in **Ram Singh and another v. Shiv Narain** 2006 (3) RCR (Civil) 432, to submit that where once it is proved that a person against whom a

decree of injunction had been passed had disobeyed it, the consequences flowing from the provisions of Order 21 Rule 32 CPC would be visited upon such person.

He next submitted that in any case the respondents having committed contempt of court, they are also liable to be punished for the said act also.

12. Upon specific query to learned counsel as to whether the respondents were in possession of the suit land, with the execution court having specifically recorded a finding that they (the respondents) did not claim to be in such possession, learned counsel submitted that in fact the respondents had actually averred falsely in their pleadings and in the examination-in-chief of RW2 that they are not in possession of the suit land, because the said respondent had actually admitted to such possession.

He pointed to the cross-examination of RW2 (a copy of which has been annexed as Annexure P-4 with the petition), wherein it is stated as follows, towards the end of the cross-examination:-

“It is wrong to suggest that Hazoor Singh etc. are in possession over the land in dispute as a tenant under Punjab Wakf Board till today. Voluntarily we are in possession of the suit land to the extent of 10 kanals 10 marlas. We are in possession of the said land of last about 30-32 years ago. It is wrong to suggest that we are no in possession over the part and parcel of any such 10 kanals 11 marlas of land.”

Thus, his contention is that the respondents having admitted their possession over the suit land to the extent of 10 kanals and 10 marlas thereof, the total suit land being 16 kanals and 13 marlas falling in *khasra* nos.43 and 44 as per the *jamabandi* for the year 1986-87 (as is described in both, the head note of the suit, as also the decree that was issued in favour of the petitioners'

father, as also the application under Order 21 Rule 32), the learned execution court wholly erred in dismissing the application.

13. *Per contra*, Mr. G.S. Nagra, learned counsel for the respondent judgment debtors, first submitted that in fact even the Punjab Wakf Board had already filed a civil suit seeking possession of the suit land and therefore the petitioner could not claim to be in legal possession thereof.

He next submitted that with the respondents having specifically denied any such occurrence at all, and they in any case having admitted in their pleadings that they are not in possession of the suit land, the execution court did not err in dismissing the application filed under Order 39 Rules 1 and 2 CPC.

He consequently prayed for dismissal of the petition.

14. Upon query with regard to the admission made by respondent no.2 in his cross-examination as RW2, to being in possession of the 10 kanals and 10 marlas of the suit land, Mr. Nagra of course could not refute the factual position as regards the testimony, but submitted that that it is not even the case of the petitioner, because in the application filed under Order 21 Rule 32, it is not stated anywhere that the respondents are in such possession, and if that had been so, a specific issue to that effect would have been framed, upon which evidence could have been led; and consequently, a statement made in cross-examination, even beyond the own case of the petitioner, cannot be held against the respondents to either send them to civil imprisonment or for attachment of their property, when the case of the petitioner and her father was not that they had actually been dispossessed by the respondents, but only that their crops had been destroyed, which allegation the respondents have wholly denied, as also the allegation that the respondents tried to run over the

decree holder and his son-in-law, i.e. AW1 Kuldip Singh, with their tractor.

He specifically pointed to the fact that in paragraph 9 of the application, the allegation is not that the respondents are in possession of the suit land, but that they threatened the decree holder and his son-in-law to vacate the same within one week, or face dire consequences.

15. Having considered the aforesaid arguments, though Mr. Bawa, learned counsel for the petitioner, would be otherwise absolutely correct that with respondent no.2 having admitted in his cross-examination that he and his co-judgment debtors are in possession of 10 kanals and 10 marlas, it would amount to a violation of the decree issued by the trial court in the civil suit filed by the petitioners' father; however, I would agree with Mr. Nagra that such admission by the respondent judgment debtors, actually not even being the allegation by the petitioner, with the allegation only being that their crops had been destroyed and that the respondents had threatened to dispossess them, with that allegation not having been proved other than simply by way of the oral testimony of the son-in-law of the decree holder, (stated to be the husband of the present petitioner), with that oral testimony refuted by the respondents, the provision of Order 21 Rule 32 cannot be invoked against the respondents.

Of course, had the allegation of the petitioner been that the respondents have taken possession of the suit land, and in cross-examination respondent no.2 had admitted to such possession, it could have been an 'open and shut' case in favour of the petitioner, with the respondents to be either sent to civil imprisonment or with their property to be attached; however, in the face of the fact that there is not even an allegation at any stage made by the petitioner that the suit land has been actually taken possession of by the

respondents after the decree of permanent injunction was passed against them, and the only allegation is with regard to damage of crops and threats issued, the contention of Mr. Bawa that the admission made by respondent no.2 in his cross-examination that the respondents were in possession of the suit land, cannot be made the sole basis for ordering the civil imprisonment of the respondents, nor for attaching their property.

This would be especially so because even in the grounds of revision pleaded before this court, no averment has been made that the suit land has been taken possession of by the respondents, the averment even here being that the respondents had entered the suit land with weapons and had destroyed the crops standing there, and had tried run over the decree holder and his son in law, with their tractor.

16. Though Mr. Bawa submitted that the police is in collusion with the respondents and therefore no complaint was registered by them with regard to destruction of crops, however, simply on that allegation, with no substantive evidence at all led with regard to such destruction, or of threats made, the simple oral testimony of the petitioners' husband to the effect that the crops were destroyed, again cannot, be accepted to entail either of the aforesaid consequences for the respondents, in my opinion.

17. Thus, even though I do not agree with the observation of the execution Court that simply because the son-in-law of the decree holder, i.e. AW-1 Kuldip Singh was a Government servant who was working 25 kilometers away from the place where the suit land is situate, and therefore he could not have reached that place at 05:30 p.m. on 30.10.2006, yet, simply because he actually could have been present at the spot after office hours at the time, does not authenticate the version given by the decree-holder in his

application under Order 21 Rule 32, without any other evidence led to prove that the occurrence took place, other than the oral testimony of AW-1.

[It is of course to be also noticed that the observation of the trial Court that 30.10.2006 was winter time and therefore AW-1 could not have reached the spot from his office 20-25 kilometers away, within one and a half hours, is not an accurate observation, because 30.10.2006 in this part of the country cannot be taken to be winter, though most definitely it would be pre-winter/autumn].

18. Further, even though this Court has not found ground enough to interfere with the impugned order, it also has to be observed that the contention of Mr. Nagra, learned counsel for the respondents-judgment debtors, that because the Punjab Wakf Board has instituted a civil suit seeking possession of the suit land, the petitioner cannot claim to be in legal possession thereof, is not an argument with any merit in the present proceedings, because whether or not the Wakf Board eventually succeeds against the petitioner qua the suit land, the question presently is whether a decree of perpetual injunction, that was validly issued in favour of the father of the petitioner, (i.e. in favour of the decree-holder), has been violated by the respondents or not.

19. To conclude however, despite having observed as above in paragraphs 17 and 18, this Court having come to a conclusion as discussed before that, that the petitioners'/decree holders' case right upto this Court in their pleadings, being only that the respondents had destroyed their crops and had threatened them, with that allegation not amply proved and with there being no averment at all that the suit land has been actually taken possession of by the respondents, an oral arguments raised to that effect by Mr. Bawa,

learned counsel for the petitioner, before this Court, (on such possession), cannot be accepted to set aside the impugned order.

20. Consequently, this petition is dismissed.

Naturally, however, if any proceeding is initiated by the petitioner with regard to possession having been taken by the respondents subsequently, with the decree issued by the trial court having thereby been violated, such proceeding would be considered and decided on its own merit.

January 29, 2019
dinesh/nitin

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes