

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 222

Civil Revision No.6432 of 2016
Date of Decision: July 16, 2019

Chiman Singh & others

..... PETITIONERS

VERSUS

Makhan Singh

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE DEEPAK SIBAL**

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PRESENT: - Mr. S.K. Aneja, Advocate, for the petitioners.

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Deepak Sibal, J (Oral)

The present petition is directed against order dated 29.07.2016 passed by the Additional Civil Judge (Senior Division), Jalalabad (West) (for short, 'the Executing Court'), vide which, an application filed by the respondent under Order 21 Rule 32 CPC has been accepted and for violation of the injunction granted by the Trial Court, the petitioners have been sent to civil imprisonment for a period of one month.

The facts, in brief, which are required to be noticed for adjudication of the petition are that the respondent instituted a suit to restrain the petitioners, who were the defendants in the suit, from forcibly dispossessing him from the land detailed and described in the head note of plaint (for short, 'the suit property'). On issuance of notice, the petitioners

appeared before the Trial Court and contested the suit. On the basis of evidence led by both the parties, the Trial Court accepted the respondent's suit by passing judgment & decree dated 10.09.1992 in the following terms:-

“In view of my above issuewise findings, I pass a decree of permanent injunction with costs in favour of the plaintiff and against the defendants that the plaintiff is the owner and in possession of the suit land and the defendants are restrained to dispossess the plaintiff from the suit land forcibly. Decree sheet be prepared and file be consigned to the record room.”

The petitioners filed an appeal against the aforesaid judgment & decree which was dismissed on 19.05.1993 by the Additional District Judge, Ferozepur (for short, 'the Appellate Court'). Since no further challenge was made by the petitioners, the afore-referred proceedings attained finality.

In spite of the above injunction, in the year 2008 the petitioners forcibly entered into the suit property. Thereafter, litigation took place between the parties before the revenue authorities and while the same was pending, the respondent filed an application under Order 21 Rule 32 CPC for execution and implementation of the afore-quoted judgment & decree dated 10.09.1992 passed by the Trial Court, in which notice was issued to the petitioners by the Executing Court. After considering the evidence led by the parties, the Executing Court concluded that the petitioners, in violation of the afore-quoted decree dated 10.09.1992, had forcibly entered into the suit property. Accordingly, the petitioners were

directed to be sent to civil imprisonment for a period of one month. The said order of the Executing Court is under challenge in the present proceeding.

Learned counsel for the petitioners submitted that the petitioners were always in possession of the suit property and therefore, there is no question of the petitioners forcibly dispossessing the respondent in the year 2008 as alleged by him. It has further been submitted that even if the case of the respondent was to be accepted, the application filed by him under Order 21 Rule 32 CPC in the year 2012 was barred by limitation as the same was beyond the prescribed period of limitation of 3 years since it complained of an event which took place in the year 2008.

The afore-quoted judgment & decree dated 10.09.1992 passed by the Trial Court clearly found the respondent to be in possession of the suit property and further restrained the petitioners from forcibly dispossessing him from the same. The petitioners' appeal against the afore-referred judgment & decree was dismissed by the Appellate Court. Admittedly, no further appeal was filed by the petitioners and therefore, the aforesaid findings attained finality.

After the recording of above findings, no proceeding before any Court or authority has been shown to this Court, under which the petitioners could have legally entered in possession of the suit property. However, in an application filed by the petitioners before the revenue authorities seeking therein change in the Khasra Girdawari (record of possession), they had admitted that since the year 2009 they were in possession of the suit property. Though such claim was rejected by the revenue authorities, it amounts to admission on the part of the petitioners that they entered in possession of the suit property in the year 2009 and since

they have not shown any legal basis thereof, it can safely be held that the same was in violation of the afore-quoted decree dated 10.09.1992, through which, they were restrained from interfering in the possession of the respondent.

The argument raised by learned counsel for the petitioners that the respondent’s application filed under Order 21 Rule 32 CPC was barred by limitation as the same had been filed after 4 years of his alleged dispossession, is also required to be considered only to be rejected.

Article 136 to the Schedule attached with the Limitation Act, 1963 (for short, ‘the Act’) reads as under:-

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:
			Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to an period of limitation.

As per afore-quoted provision, for the execution of any decree other than a decree for mandatory injunction or order of any Civil Court, the prescribed period of limitation is 12 years. As per proviso, for an application seeking enforcement or execution of a decree granting perpetual injunction, there is no prescribed period of limitation.

In the case in hand, the respondent sought enforcement of permanent injunction granted in his favour. Thus, the application filed by the respondent would be covered by Article 136 in the Schedule attached to the Act and therefore, not time barred.

In view of the above, finding no merit in the present petition, the same is dismissed.

July 16, 2019
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(Deepak Sibal)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No