

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

Bhola Dass, Gurmail Dass and Nek Dass. The defendants have no concern with the suit property. Restraint was sought qua interference by the defendants in the suit property. The suit was decreed vide judgment and decree dated 14.02.2012. A decree for permanent injunction was passed in favour of the plaintiff/respondent restraining the defendants/petitioners from interfering in the peaceful possession of the plaintiff and from dispossessing him from the suit property. The said judgment and decree was never assailed by the petitioners.

[3]. Thereafter another suit was filed by the respondent/decreed holder and one M/s Verma Trading Company for recovery and permanent injunction. Permanent injunction was sought qua alienation of the suit property. It could not be demonstrated as to how the petitioner could have alienated the property, when the respondent/decreed holder had already claimed permanent injunction on the basis of his title based on sale deed from Bhola Dass, Gurmail Dass and Nek Dass.

[4]. Respondent/decreed holder is running a commission agency. The suit for recovery and permanent injunction was dismissed by the trial Court. Appeal was dismissed by the lower Appellate Court and Regular Second Appeal is pending in the High Court. The sale deed on the basis of which the respondent

had purchased the property from the original owners namely Bhola Dass, Gurmail Dass and Nek Dass could not be brought on record.

[5]. In the application under Order 21 Rule 32 CPC filed by the respondent-decree holder, para No.3 and 6 are necessary to be quoted herein:-

- “3. *That the J.Ds/respondents had formed a party against the D.H./applicant and they had threatened the applicant that they will interfere in the possession of the D.H./applicant over the land mentioned in the heading of the application and will dispossess the applicant and his brother Tarsem Lal from the said land, due to which the applicant filed a suit for permanent injunction against the respondents vide suit No.43 of 14.06.2008, which was decreed with costs on 14.02.2012 and the respondents were restrained from interfering in the possession for the applicant and from dispossessing the applicant from the above said land mentioned in the heading of the application.*
6. *That the month of April, 2013 the respondents took possession of the land in question mentioned in the heading of the application illegally and forcibly by taking the undue benefit of the weakness of the applicant. The respondents were restrained from interfering in the possession of the applicant and from dispossessing him from the land in question. The said decrees and judgments were well in the knowledge of the respondents and they were well in the knowledge of the respondents and they were bound to obey the same.”*

[6]. Perusal of the aforesaid paras would show that the

decree holder had perceived threat perception of dispossession at the instance of the petitioners in para No.3. In para No.6 of the application, the decree holder alleged that in the month of April 2013, the petitioners had taken forcible possession of land in question from him.

[7]. Petitioners contested the application and brought to the notice of the Court in reply that prior to institution of suit for permanent injunction, respondent in order to get forcible possession over the suit land came to the spot along with weapon and FIR No.86 dated 06.06.2008 under Sections 307, 447, 511, 427, 148, 149 IPC was registered against the respondent-decree holder. The Court of Addl. Sessions Judge, Sangrur had convicted father of the respondent namely Hem Raj and his brother namely Tarsem Chand in the aforesaid offences vide judgment dated 12.08.2010. The respondent in connivance with the revenue officials got the khasra numbers changed. Respondent never remained in possession of the suit property. Para no.6 of the application is suggestive of the fact that no particular time, date, place and manner of dispossession has been alleged by the respondent-decree holder. The application under Order 21 Rule 32 CPC in terms of para Nos.3 and 6 is vague enough and ambiguous. No particulars of alleged dispossession or violation of decree have come forth.

The pleadings are silent as to the date on which the decree holder was allegedly dispossessed and manner of dispossession.

[8]. Vide the impugned order, warrants for delivery of possession to the decree holder have been issued. Decree for injunction passed in a suit for prohibitory injunction can be exercised in the manner provided in Sub-Rules 1 and 3 of Rule 32 of Order 21 CPC. In the event of non-compliance of decree by the defendants or wilful disobedience of the same, the decree may be enforced by detention of the defendants in the civil prison or by attachment of property or both. Issuance of warrant of possession or by giving police help is not within the jurisdiction of the executing Court.

[9]. In **Dharam Pal vs. Ami Lal, 1993(1) R.R.R. 29**, the High Court has observed in para No.3 of its judgment in the following manner:-

“3. After hearing learned counsel for the parties, I am of the view that the executing court has no jurisdiction to issue warrant of possession and give police help in execution of decree for prohibitory injunction. In executing, a decree for injunction passed in a suit for decree for prohibitory injunction can be executed in the manner provided in Order 21 Rule 32(1) and (3) of the Civil Procedure Code which provides that where the defendant willfully fails to obey decree for injunctions passed against him, the decree may be enforced by detention in civil prison or by attachment of property or by both. Since the decree-holder sought a decree for injunction, the same can be executed

in accordance with the provisions of law governing execution of decree for injunction. Learned counsel for the respondent has failed to bring to my notice any provisions of law under which warrant of possession or police help can be provided for getting compliance of the decree of prohibitory injunction. Learned counsel for the petitioner has also failed to bring to my notice any other infirmity in the impugned order.”

[10]. In **Sarup Singh vs. Daryodhan Singh, 1972 AIR (Delhi) 142**, Full Bench of the Delhi High Court has held that issuance of warrants of delivery of possession for execution of decree for injunction passed in a suit for mandatory injunction to vacate the disputed premises is not justified. Such a decree has to be executed in the manner provided under Order 21 Rule 32 (1) and (3) CPC.

[11]. At the time of issuance of notice of motion on 11.09.2018, following order was passed by this Court:-

“Learned counsel for the petitioners contends that in respect of decree for permanent injunction, execution lies under Order 21 Rule 32 CPC. Decree for permanent injunction can be executed in the manner as prescribed in sub-Rules (1) and (3) of Order 21 Rule 32 CPC. In the event of violation of the decree, the same can be enforced by detaining the judgment-debtor in civil imprisonment or by attaching his property. In any case issuance of warrants of possession to give effect to the decree even by means of providing police help is not warranted.

Notice of motion for 14.12.2018.

Till the next date of hearing, impugned order may not be given effect.”

[12]. It is true that in **Anand Shukla and another vs. Muti**

Mittal, 2011(3) R.C.R. (Civil) 305, the explanation added to sub Rule 5 of Rule 32 CPC by way of amendment w.e.f. 01.07.2002 was noticed and it has been declared that the expression “the act required to be done” covers prohibitory as well as mandatory instructions. The Law Commission noted the conflict of views with regard to the expression used in explanation. The Law Commission also noticed conflicting view on the subject terming them as the wider view and narrower view.

[13]. Since the decree holder has not pleaded the material particulars with regard to disobedience and dispossession in the application under Order 21 Rule 32 CPC, therefore, the factum of dispossession as alleged by the decree holder would remain on debatable note. Decree holder cannot be presumed to have been dispossessed throughout the month of April 2013. Previous history of the case in view of dismissal of the suit for recovery and permanent injunction by both the Courts, pendency of Regular Second Appeal in the High Court and conviction of brother and father of the decree holder in respect of property in question would further make the plea of dispossession on questionable note.

[14]. Order 21 Rule 32 CPC in respect of intentional violation requires stricter proof of dispossession with reference to the date, time, place and manner of dispossession. The expression

“the act requires to be done” would arise when factum of intentional dispossession is proved to the hilt. Where civil liberty of a person is involved, the requirements are required to be proved with reference to date, time, place and manner of dispossession. In the absence of such pleadings in the application, the ratio of **Anand Shukla and another's** case (supra) will not be attracted. The aforesaid analogy makes the present case distinct from the cited case. The decree can be enforced on legal parameters except to direct the delivery of possession by issuance of warrants of possession.

[15]. In view of above, the impugned order dated 20.08.2018 passed by the Addl. Civil Judge (Sr. Divn.) Sunam is not legally sustainable and is accordingly set aside. Normal consequences to follow.

July 10, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No