

264

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

CR No. 6927 of 2018
Date of Decision: 24.05.2019

Murti Kaur (deceased) through LR's and others

-Petitioners

Vs

Kaur Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.K. Singla, Advocate,
for the petitioners.

Mr. Nirmaljeet Singh Sidhu, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioners have preferred this revision petition against the order dated 18.08.2018 passed by Additional Civil Judge (Senior Division), Phul vide which application filed under Order 21 Rule 32 read with Section 151 CPC was allowed. Warrants of possession of the property in question were issued besides attaching property of the petitioners.

2. Respondent- decree holder filed a suit for permanent injunction. Defendants were proceeded against exparte after filing of the written statement and suit was decreed exparte vide judgment and decree dated 03.04.2012.

3. Operative part of the judgment reads as under:-

“In the light of the above discussion, the suit of the plaintiff succeeds. I therefore, pass an ex parte decree with costs in favour of the plaintiff and against the defendants permanently restraining the defendants from interfering in his possession over the suit property and from dispossessing him from the suit property forcibly and illegally. The defendants are also permanent restrained from demolishing the existing construction in the suit property forcibly and illegally. Decree be drawn.

Announced in open court.

*Dated: 3.4.12 Sd/- (G.S. Dhillon, PCS)
Addl. Civil Judge (Sr. Division),
Phul.”*

4. Thereafter, an application under Order 21 Rule 32 CPC was filed by the respondent- decree holder wherein para no.2 was pleaded to the following manner:-

“2. That inspite of passing decree of permanent injunction by the Hon'ble Court against the defendants, they formed gang and they along with some other persons are threatening to interfere into the possession of decree holder and to dispossess the decree

holder from the land in dispute and about one week ago, the defendants along with some other persons armed with destroyable weapons, come present near the land of decree holder and threatened that they will dismantle the building constructed in the land in question and to take the possession by dispossessing the decree holder from land in question. Despite by making request repeatedly by decree holder and by showing copy of order and decree to them, they given threats that they will get the possession of land in dispute and will dismantle the house. The defendants have no right to interfere into the possession of decree holder or to cause any loss to the house of decree holder.”

5. Perusal of the aforesaid paragraph would show that the decree holder was having threat perception in respect of his dis-possession and dismantling of the building allegedly constructed by him.

6. In the complaint filed before the police, a statement was made by the decree holder on 19.04.2017 to the effect that sale deed was registered and mutation was also sanctioned in

his name but possession of the property was never delivered to him. The said statement has been brought on record as Ex.D1.

7. In the application under Order 21 Rule 32 CPC, pleadings are conspicuously missing with regard to time, date and manner of dis-possession of the decree holder at the hands of judgment debtors.

8. The Executing Court while passing the impugned order has not adverted to the aforesaid facts in any manner. The decree holder had purchased $\frac{1}{2}$ share of the plot from Murti Kaur i.e. predecessor-in-interest of petitioner No.1. After the purchase, he had allegedly constructed his house. After the death of Murti Kaur, legal representatives were brought on record and thereafter, exparte judgment and decree was passed on 03.04.2012.

9. The decree holder while appearing as AW1 before the Executing Court has admitted the fact that he had filed an application (Ex.D1) before the police on 28.09.2009.

10. Perusal of the aforesaid statement would show that date, time and manner of dis-possession of the decree holder are conspicuously missing, rather the statement is suggestive of the fact that possession was never delivered to the decree holder.

11. Evidently, the petitioners- decree holder had

purchased ½ share from Murti Kaur. No partition of the plot has taken place by metes and bounds.

12. In view of aforesaid facts and circumstances of the case, reference can be made to **Surinder Singh vs Balwant Singh (dead) through LRs and others, 2017(2) RCR (Civil) 452** in the context of alleged dis-possession with regard to time, place and manner of dis-possession.

13. In this case, the aforesaid ingredients are missing, therefore, no indulgence can be granted in favour of the decree holder for ordering punitive action against the judgment debtors in terms of Order 21 Rule 32 CPC.

14. For the reasons recorded hereinabove, I accept this revision petition. Consequently, impugned order dated dated 18.08.2018 passed by Additional Civil Judge (Senior Division), Phul is hereby set aside.

15. Normal consequences to follow.

24.05.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No