

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.8502 of 2016(O&M)  
Date of Decision: 24.01.2019

Jaswinder Singh

.....Petitioner

Versus

Surjit Kaur

.....Respondent

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

Present: Mr. Amandeep Saini, Advocate  
for the petitioner.

Mr. Parvinder Singh, Advocate  
for the respondent.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has preferred this revision petition against the order dated 17.09.2016 passed by Additional Civil Judge (Senior Division), Balachaur vide which execution of the judgment and decree dated 10.06.2005 filed by the petitioner was dismissed.

[2]. Plaintiff filed a suit for specific performance of agreement to sell dated 18.10.2002. The suit was decreed vide judgment and decree dated 10.06.2005. Plaintiff was directed to get the balance sale consideration deposited in the Court within a period of two months and thereafter, defendant was to get the sale deed registered in favour of the plaintiff in terms of

agreement to sell within a further period of one month after receiving an amount of Rs.1,00,000/- being balance sale consideration. It was also ordered that in the event of failure on the part of the defendant to execute the sale deed, the plaintiff will be at liberty to get the same registered through process of the Court. Sale deed has already been executed with the process of the Court.

[3]. In the execution filed by the plaintiff/decreed holder, warrants of possession were issued. Judgment debtor applied for recalling of warrants of possession on the premise that the decree holder has executed a sale deed in respect of the suit property in favour of Samriti Kapoor and Madhu Kapoor in equal shares and possession has also been delivered. The factum of delivery of possession in the sale deed to which judgment debtor was not party, was taken to be a ground for dismissing the execution being the result of concealment and it was also observed that the decree holder has not come to the Court with clean hands and does not deserve any relief from the Court. The objections filed by the judgment debtor was allowed and execution was dismissed vide the impugned order.

[4]. Perusal of the record would show that the suit was decreed on 10.06.2005. The record would show that the judgment debtor was instrumental in objecting the execution of

decree by all possible means till date.

[5]. On 08.12.2008, Additional Civil Judge (Senior Division), Balachaur passed the following order:-

*Present: Sh. P.K. Rana, Advocate for decree-holder  
Judgment-debtor ex-parte.*

*In this execution, objections which were filed many times on behalf of judgment-debtor, are already disposed of by the predecessor Court. Now, only possession of the suit property is liable to be delivered to the decree-holder. At this juncture, judgment-debtor is ex-parte and is not coming present. Earlier also, judgment-debtor used to appear through counsel for few adjournments and thereafter, nobody used to appear for long. Suit for specific performance was decreed in favour of Jaswinder Singh long back on 10.06.2005 and decree is not satisfied till date. Hence, to simplify the future course of action and to curb the delay, application filed by the decree-holder today, is separated, which shall be running forward hereinafter, to put an end to the confusion created by plethora of applications, documents and all other things on record. 'B' file i.e. remaining file is ordered to be separated, to be kept under the lock of the court, like all other 'B' files by the Ahlmad, after making the relevant entry in the register of 'B' files. For clarity, copy of this order be*

*also placed in 'B' file. Application be registered afresh. For consideration, come on, 12.12.2008.*

(SANGEET PAL SINGH), PCS,  
ACJ (SD)/08.12.2008”

[6]. On 08.12.2008, Additional Civil Judge (Senior Division), Balachaur also passed the following order:-

*“Present: Sh. P.K. Rana, Adv. for DH  
JD ex-parte.*

*Execution in hand was filed long back in 2005. It is clear from the table below that JD became ex-parte four times. For the first time, objections of JD were dismissed on 13.12.2006. Objections of JD were dismissed for the second time on 02.04.2008. Still again, same objections were pressed by the JD, who agitated that his objections regarding preliminary decree, Section 28 of Specific Relief Act, etc. were pending, but it came to notice that the same were already dismissed. Suit of Jaswinder Singh for specific performance was decreed long back on 10.06.2005 and in this execution, sale-deed is already executed in favour of DH and at this juncture, only warrants of possession are being issued for delivery of possession of disputed property to DH and the decree shall be satisfied. Following table is illustrating the facts:-*

TABLE

| Sr. No. | Date                                                 | Proceedings                                                                                                                                                                                      |
|---------|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1)      | 10.06.2005                                           | Suit of Jaswinder Singh decreed against Surjit Kaur etc.                                                                                                                                         |
| 2)      | 06.09.2005                                           | Execution filed by Jaswinder Singh.                                                                                                                                                              |
| 3)      | 14.10.2005                                           | JDs proceeded against ex-parte                                                                                                                                                                   |
| 4)      | 13.01.2006                                           | Notice issued to JD again                                                                                                                                                                        |
| 5)      | 23.02.2006                                           | JD did not appear despite service                                                                                                                                                                |
| 6)      | 22.04.2006                                           | Notice again issued to JD.                                                                                                                                                                       |
| 7)      | 03.06.2006                                           | JDs again refused notice                                                                                                                                                                         |
| 8)      | 24.07.2006                                           | Sale order of suit land (four dates)                                                                                                                                                             |
| 9)      | 15.11.2006                                           | JDs filed objections.                                                                                                                                                                            |
| 10)     | 13.12.2006                                           | Objections of JDs dismissed.                                                                                                                                                                     |
| 11)     | 05.04.2007                                           | JDs again proceeded against ex-parte (3 <sup>rd</sup> time)                                                                                                                                      |
| 12)     | 10.05.2007                                           | Notice again issued to the JDs (4 <sup>th</sup> time)                                                                                                                                            |
| 13)     | 05.06.2007                                           | JD present again in person.                                                                                                                                                                      |
| 14)     | 01.08.2007                                           | Application of DH to clear encumbrances of suit land decided.                                                                                                                                    |
| 15)     | 22.09.2007                                           | New counsel for JD marked present.                                                                                                                                                               |
| 16)     | 10.12.2007                                           | Counsel for JD not argued (did not prepare objections)                                                                                                                                           |
| 17)     | 24.12.2007                                           | Counsel for JD pressed objections to decide objections qua preliminary decree, late deposit of balance sale consideration and Section 28 of Specific Relief Act.(NOT ARGUED FOR 11 ADJOURNMENTS) |
| 18)     | 02.04.2008                                           | Application of JD qua objections referred above u/s 151 C.P.C dismissed.                                                                                                                         |
| 19)     | 10.05.2008                                           | Sale-deed executed (Warrants of possession issued)                                                                                                                                               |
| 20)     | 12.06.2008                                           | None appeared for JD                                                                                                                                                                             |
| 21)     | 18.07.2008                                           | Counsel for JD again present and pressed to decide application u/s 28 of Specific Relief Act.                                                                                                    |
| 22)     | 01.10.2008                                           | Found that application u/s 28 of Specific Relief Act already dismissed on 02.04.2008. None for JD. JD ex-parte (Warrants of possession issued).                                                  |
| 23)     | 07.10.2008<br>24.10.2008<br>06.11.2008<br>21.11.2008 | Warrants of possession were ordered to be issued.                                                                                                                                                |

*In the light of all the above facts, to avoid confusion and for the purpose of clarity, as well as, to curb*

*the delay to avoid undue wastage of the time by the parties time and again, execution in hand stands disposed of being partly satisfied. Hereinafter, court shall be proceeding further with the application for warrants of possession and for correction of site-plan accordingly for issuance of warrants of possession. For clarity, two print out of this order be made, to be kept in the main file, as well as, the application which shall be proceeding further, since only possession is to be delivered to the DH and JD is ex-parte since 01.10.2008. Main file be consigned and the application be put up on 09.01.2009 for consideration, when it shall be registered afresh to proceed further.*

PRONOUNCED  
DT: 08.12.2008

(SANGEET PAL SINGH) PCS  
Addl. Senior Civil Judge,  
Balachaur.”

[7]. Perusal of the aforesaid order would show that since 10.06.2005, number of proceedings were undertaken by the executing Court and warrants of possession are only meant to deliver the possession of the disputed property to the decree holder and thereafter, decree shall be satisfied. The execution was partly satisfied with the observation that in order to avoid confusion and for the purpose of clarity and to avoid delay, the

execution was disposed of being partly satisfied and the Court shall be proceeding further with the application for warrants of possession. The judgment debtor was *ex parte* since 01.10.2008. The execution was registered freshly without there being any application on behalf of the decree holder. The execution of the sale deed in favour of Samriti Kapoor and Madhu Kapoor was taken to be an instance to dismiss the execution that the decree holder has not come to the Court with clean hands.

[8]. Evidently, the judgment debtor was not party to the aforesaid sale deed. The aforesaid sale deed would bind the parties to the same and by no stretch of imagination, judgment debtor can extract any actionable right therefrom. Judgment debtor is in possession of the property despite the decree passed on 10.06.2005. Perusal of aforesaid two orders of even date i.e. 08.12.2008 passed by Additional Civil Judge (Senior Division), Balachaur would show that the judgment debtor has avoided and objected to the delivery of possession on many occasions. Even three collusive suits are pending in different Courts thereby creating obstacle in execution of the decree dated 10.06.2005.

[9]. While issuing notice of motion on 16.12.2016, following order was passed by this Court:-

*“Learned counsel for the petitioner contends that in a suit for specific performance, petitioner being decree-holder got the sale deed executed with the process of the Court. One Davinder Singh also filed a suit against the judgment-debtor and got stay of dispossession in respect of portion marked as ABCDEFGHIJK. The decree-holder/petitioner thereafter sold 9 Marlas 4½ Sarsahis out of total land of 19 Marlas vide sale deed dated dated 09.06.2015 in favour of Sumiti Kapur and Madhu Kapur. Possession could not be delivered to the vendees, but the executing Court has dismissed the execution in toto without adhering to the fact that the suit filed by the Davinder Singh was a collusive suit and the petitioner/decreree-holder had only sold 9 Marlas 4½ Sarsahis out of total land of 19 Marlas. At the most execution proceedings could have been deferred.*

*Notice of motion for 22.02.2017.”*

[10]. Learned counsel for the respondent relied upon **Shew Bux Mohata and another Vs. Bengal Breweries Ltd. and others, 1961 AIR (SC) 137** and contended that in view of factum of delivery of possession as admitted by the decree holder in the sale deed executed in favour of Samriti Kapoor and Madhu Kapoor, the decree holder has to file separate suit for possession.

[11]. Perusal of the aforesaid judgment would show that in that case, there was delivery of possession by the judgment

debtor through process of the Court and statement of Naib Nazir, District Judge's Court, Alipore was recorded. In view of facts and circumstances of that case, observations were made in para Nos.5, 10, 18 and 22 of the judgment. No such controversy is involved in the present case. Secondly, the ratio of **Jeet Singh Vs. Gursewak Singh and others, 2015(3) RCR (Civil) 82** has already held to be *per inquirium* by the Co-ordinate Bench of this Court in **CR No.5255 of 2014** titled **Gurjant Singh Vs. Harbans Kaur and others** decided on 07.04.2016.

[12]. Looked from any angle, the impugned order dated 17.09.2016 passed by Additional Civil Judge (Senior Division), Balachaur is not legally sustainable and is accordingly set aside. This revision petition is allowed. Executing Court is directed to execute the decree in accordance with law. I have no doubt that the executing Court shall make every possible endeavour to execute the decree at the earliest.

24.01.2019

Prince

(RAJ MOHAN SINGH)  
JUDGE**Whether reasoned/speaking**  
**Whether reportable****Yes/No**  
**Yes/No**