

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

**CR No.8361 of 2018(O&M)
Date of Decision: 21.08.2019**

Devi Ram and another

.....Petitioners

Versus

Hari Chand

.....Respondents

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

Present:Mr. Baljeet Beniwal, Advocate
for the petitioners.

Mr. Ashok Kaushik, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have preferred this revision petition against the order dated 04.10.2018 passed by the Civil Judge (Junior Division), Hodal, vide which objections filed by the petitioners in execution were dismissed.

[2]. Plaintiff/respondent filed a suit for permanent injunction against the defendants/petitioners on 29.11.2010. The suit was decreed vide judgment and decree dated 16.09.2015 passed by the Civil Judge (Junior Division), Hodal. Trial Court held that plaintiff was a co-sharer in possession of khasra No.424 and

defendants were restrained from interfering in the possession of the plaintiff. Defendants remained unsuccessful in appeal before the Lower Appellate Court which was dismissed on 15.05.2017.

[3]. Plaintiff/decreed holder filed execution on the premise that after dismissal of the appeal by the Additional District Judge, Palwal, defendants/judgment debtors have illegally and forcibly dispossessed the plaintiff from two shops. Para No.3 of the execution petition is to the following effect:-

“3. That after the dismissal of the appeal of the JDs, the JDs have illegally and forcibly and to cause wrongful loss to the DH have occupied two shops which are bounded by East: House of Sh. Ramesh s/o Shri Chand (24'-04"), by West: Gali (24'-04"), by North: Rasta (19'-00") and by South: Property of DH (19'-00") which is situated towards Eastern side of the suit property and is duly shown with letter 'BCD' in the site plan which is Ex.P-1 on the Court file, so the DH: is entitled to get the possession of the said encroached shops from the JDs.”

[4]. In reply to the aforesaid execution petition, judgment debtors have specifically pleaded that their possession was from the times of their fore-fathers and they have not dispossessed the plaintiff/decreed holder from the shops in question in any manner. Para No.3 of the reply reads as under:-

“3. That the contents of para No.3 of the further submission of the execution petition are wrong and

denied. It is specifically denied that the JDs/defendants have ever illegally and forcibly or to cause and wrongful loss as alleged have occupied two shops as alleged, rather it is submitted that the JDs/defendants are well in possession of these two shops and also some other portion much before even the institution of the suit by the DH/plaintiff and it is also submitted that the EX.P1 is not the correct site plan and it is strongly denied that the DH/plaintiff is entitled to get the possession of the shops as it is already submitted that the Jds/defendants are much before in possession of the two shops along with some other portion and there is no question of these shops being encroached by the JDs/defendants as alleged. It is also submitted that the DH/plaintiff has moved this execution petition by putting wrong facts before this Hon'ble Court and with mala fides and in the guise of this execution petition he wants to misguide this Hon'ble Court and altogether has turned the execution petition into a type of regular suit by asking for a different and wrong relief than from his decree. It is further submitted that the DH/plaintiff cannot go beyond the decree and ask for possession from the Hon'ble Executing Court.”

[5]. Objections filed by the defendants/petitioners were rejected by the executing Court vide the impugned order without advertng to the ingredients in terms of Order 21 Rule 32 CPC. The alleged dispossession of the plaintiff/decreed holder did not correspond to any date, time and manner of dispossession which are necessary ingredients for allowing the execution in

terms of Order 21 Rule 32 CPC. Objections filed by the petitioners are required to be disposed of after following proper procedure.

[6]. In view of aforesaid factual position, executing Court was required to decide the issue of dispossession with reference to evidence led by the parties.

[7]. In view of above, impugned order is set aside to the extent of issuing warrants of possession. The case is remanded back to the executing Court with a direction to decide the issue of dispossession after calling upon both the parties to lead evidence in accordance with law.

[8]. Disposed of.

21.08.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No