

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

Sr. No.114

C.R. No.1030 of 2019 (O&M)
Date of decision: 02.04.2019

Narinder Singh alias Goldy and another

....Petitioners

versus

Amarjit Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Deepak Arora, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral)

The present petition has been preferred under Article 227 of the Constitution of India for the issuance of a direction to the Civil Judge (Junior Division), Amritsar (for short – the Executing Court) to proceed with the execution proceedings instituted by the respondents only after deciding the objections filed by the petitioners. Challenge is also made to the order dated 30.01.2019 passed by the Executing Court through which warrants of possession of half share of the suit property have been issued.

About eleven years ago i.e. in August 2008, respondent No.1 filed a suit seeking therein possession by way of partition of the property detailed and described in the head note of the plaint (for short – the suit property). On being put to notice, the petitioners, who were defendants No.2 and 3 in the suit, appeared before the Trial Court and refuted respondent No.1's claim. After sifting the evidence which had come on record, the Trial

Court, through its judgment and decree dated 28.08.2012, held respondent No.1 entitled to separate possession by way of partition of her half share in the suit property. The petitioners were further restrained from alienating or transferring the suit property illegally and unlawfully till the partition of the suit property took place.

The petitioners filed an appeal against the aforesaid judgment and decree of the Trial Court which was dismissed in default. Admittedly, till date, no action has been taken by the petitioners for restoration of their appeal. Thus, the aforesaid judgment and decree of the Trial Court attained finality.

While the aforesaid appeal of the petitioners was pending, respondent No.1 sought execution of the Trial Court decree. In such proceedings, the petitioners filed their objections which were to the following effect:-

- (1) Their appeal was pending and therefore till the same was decided, the execution proceedings should be stayed.
- (2) Since respondent No.1 had been held entitled to half share after partition of the suit property, it was submitted that till the final decree, after partition of the suit property is passed, the execution proceedings should be kept in abeyance.
- (3) In the absence of proper demarcation of the suit property, the execution proceedings were stated to be not maintainable.

Since the decree in favour of respondent No.1 entitled her to possession of half of the suit property after its partition, the Executing Court through its order dated 01.12.2012, appointed Sh. Arjun Singh, Advocate, as a Local Commissioner to visit the site and suggest the mode of partition.

As directed by the Executing Court, the Local Commissioner after visiting the site suggested a mode of partition which in the presence of the learned counsel for the parties, through its order dated 11.08.2017, was accepted by the Executing Court. Such order was not challenged by the petitioners. Rather, on 02.08.2018, through a statement made by them before the Executing Court, the petitioners agreed to hand over of the possession of the suit property to respondent No.1 in line with the mode of partition suggested by the Local Commissioner. Later, the petitioners filed an application before the Executing Court to wriggle out of the aforesaid statement dated 02.08.2018 which was dismissed by the Executing Court on 05.12.2018. Such order was challenged by the petitioners before this Court through CR-9248-2018 titled as Narinder Singh @ Goldy and another vs. Amarjit Kaur and another, which was dismissed as withdrawn on 19.12.2018.

The above facts speak for themselves. As per order dated 28.08.2012, the Trial Court passed a decree entitling respondent No.1 to half share of the suit property after partitioning of the same. In the execution proceedings launched by respondent No.1, the Executing Court appointed a Local Commissioner to visit the site and suggest a mode of partition which was done. The petitioners never challenged the appointment of the Local Commissioner nor the mode of partition suggested by him. Rather, on 02.08.2018, they appeared before the Executing Court and agreed to hand over possession of respondent No.1's half share, as per the mode of partition suggested by the Local Commissioner. That being so, it does not lie in their mouth to now approach this Court through the present petition complaining that warrants of possession have been issued by the Executing Court in

favour of respondent No.1, especially when the attempt made by them to wriggle out of their afore-referred statement dated 02.08.2018 was rejected by the Executing Court and a petition filed before this Court to challenge such order was dismissed as withdrawn.

Dismissed.

(DEEPAK SIBAL)
JUDGE

April 02, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No