

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

**CR No.2428 of 2019(O&M)
Date of Decision-23.04.2019**

Rajni Sharma

... Petitioner

Versus

Shri Thakurji through Mahant Vijay Dass Sharma and others

... Respondents

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

Present: Mr. Aakash Singla, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 07.03.2019 passed by Civil Judge (Junior Division), Patiala, dismissing the application under Order 1 Rule 10 CPC in the execution proceedings.

[2]. Perusal of the record would show that in the execution arising out of judgment and decree dated 10.04.2015 in favour of respondent No.1, objections were filed earlier in the context of questioning the capacity of Mahant Vijay Dass to be impleaded as decree holder after the death of original Mahant Jagan Nath. The said objections ultimately went upto the Hon'ble Apex Court and Mahant Vijay Dass was impleaded as legal representative of Mahant Jagan Nath and judgment debtor was directed to handover the vacant possession of the land in question in favour of the decree holder. Thereafter, number of objections were filed by third parties to

stall the execution so as to deprive the decree holder from the fruits of the decree.

[3]. The applications were filed by the petitioner on the ground that she has been appointed as Mahant of Thakur Dawara by Bheikh and Vijay Dass has no title to claim possession of the property. Bheikh has the right to appoint Mahant by lawful means by way of passing resolutions.

[4]. Having considered the controversy, I am of the view that since Mahant Vijay Dass was appointed as legal representative of Mahant Jagan Nath by the Hon'ble Apex Court and Mandir Thakur Dawara is the decree holder, therefore, the possession is to be delivered to the decree holder. The title of the petitioner in view of civil suit for declaration of Mahantship filed by her is pending. The petitioner cannot prevent the decree holder to claim possession of the property through its legal representative Mahant Vijay Dass in accordance with law. In view of order passed by the Hon'ble Apex Court, a departure has to be made from the rule of bringing all the legal representatives on record, leaving them to get their individual entitlements decided in some different Forum. Therefore, the precedents as cited i.e. **Rikhu Dev, Chela Bawa Harjuq Dass Vs. Som Dass (deceased) through his Chela Shiama Dass, 1975 AIR (SC) 2159** and **Suresh Kumar Bansal Vs. Krishna Bansal and another, 2010(1) RCR (Civil) 839** will not be applicable in the present case.

[5]. In the instant case, the earlier objections filed by the third parties have been crystallized before the Hon'ble Apex Court wherein right of Mahant Vijay Dass was acknowledged to that of legal representative of decree holder Mandir Thakur Dawara. In the execution, only decree is to be executed. No personal title of Mahant Vijay Dass is to be decided, rather the suit for declaration filed by the petitioner on the basis of her Mahantship based on resolution of Bheikh is pending, therefore, at this stage, the execution proceedings cannot be deferred.

[6]. Vide the impugned order, Assistant Collector, Ist Grade, Patiala has been appointed as receiver to take possession of all the remaining shops and submit his report after taking possession within the specified period so that possession could be delivered to the decree holder through Mahant Vijay Dass. Receiver has to prepare inventory of articles lying in the shops and he would release the same on *sapurdari*, if someone comes forward to claim the same. Mahant Vijay Dass has also been directed to appoint *sapurdar*. Till such time, execution petition has been ordered to be consigned *sine die* and is ordered to be revived, if any application comes and report of receiver is received after taking the possession of disputed shops.

[7]. By filing application under Order 1 Rule 10 CPC and for restraining the executing Court from delivering possession in favour of the decree holder, the petitioner in a way intends to help those unauthorized occupants against whom orders of ejectment have

been passed. Such a course is wholly untanable. The right of the petitioner, if any, based on resolution of Bheikh would be decided in the appropriate Forum. For execution of decree, the status of Mahant Vijay Dass would be as of legal representative of Mahant Jagan Nath and the decree can be executed even in the absence of petitioner, whose rights are subjudiced in a suit for declaration filed by her on the basis of resolution of Bheikh.

[8]. At this stage, there cannot be any such determination as to the legal representative of the deceased Mahant viz-a-viz the execution of the decree as per orders of the Hon'ble Apex Court, particularly when the right of Mahant Vijay Dass to be a legal representative of deceased Mahant Jagan Nath has already been acknowledged by the Hon'ble Apex Court.

[9]. In view of above, there is no illegality in the impugned order dated 07.03.2019 passed by Civil Judge (Junior Division), Patiala. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

23.04.2019

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No