

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

C.R. No. 5180 of 2019

DATE OF DECISION :- September 27, 2019

Rajnish Kant and another

...Petitioners

Versus

Kamla Vasta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. A.S. Manaise, Advocate for the petitioners.

Mr. Vivek K. Thakur, Advocate for respondent No. 1.

Mr. Inderjit Sharma, Advocate has appeared on behalf of respondent No. 4 by filing vakalatnama, which be taken on record.

The plaintiff Kamla Vasta had filed a suit for declaration and in the alternative for joint possession against defendants Rajnish Kant and others. The suit was contested by the defendants however Civil Judge (Sr. Divn.) Gurdaspur vide judgment and decree dated 14.8.2010 decreed the suit and a decree for declaration to the effect that plaintiff is co-owner to the joint possession to the extent of 1/7th share in the suit land situated at Village Chahiya, Tehsil and District Gurdaspur and further a decree for permanent injunction restraining the defendants from dispossessing and alienating or transferring the suit land beyond their share was passed in the process. The Will alleged to have been executed by Sh. Bihari Lal on

25.11.1978 and will dated 5.6.1996 alleged to have been executed by Smt. Amrati Devi @ Umri and sale deed No. 2679 dated 13.7.1998 executed by Sh. Rajnish Kant were set aside. The plaintiff along with his brothers and sisters impleaded as defendants No. 1 to 6 were held to be co-sharers in joint possession even to the extent of 1/7th share each observing that any sale deed beyond the said shares shall have no bearing qua the rights of the others. Though the judgment and decree were challenged by way of filing appeal before District Judge, Gurdaspur but the said Regular Second Appeal is stated to be pending before this Court. The plaintiff had filed an execution application in which the executing Court issued warrants of possession of property of JDs vide order dated 7.8.2019. The objections under Section 47 C.P.C. filed on behalf of JDs Rajnish Kant and Nirmal Kanta were dismissed.

Rajnish Kant and Nirmal Kanta have approached this Court feeling aggrieved by the order dated 7.8.2019. Notice of the revision petition was given to the respondents. Respondent Nos. 1 and 4 have appeared through counsel.

Learned counsel for the respondents stated that in view of the judgment and decree passed in favour of plaintiff, only symbolic possession could have been given to the plaintiff, however, inadvertently by bonafide mistake warrants of possession have been issued and they have no objection if the order is modified accordingly. Learned counsel for the revisionist is agreeable to such suggestion.

Considering the judgment and decree passed in favour of the plaintiff decree holder actual possession could not have possibly be given to

her since the plaintiff along with defendant Nos. 1 to 6 have been held to be joint owners in the suit land, therefore, order under revision is set aside with the observations that the executing Court may issue warrants for delivery of symbolic possession.

With such observations, the revision petition stands disposed of. A copy of this order be sent to the executing Court for necessary compliance.

(H.S. MADAAN)
JUDGE

September 27, 2019
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No