

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR No. 5946 of 2019 (O&M)

Date of Decision: September 24, 2019

Murti Devi

.....Petitioner

versus

Ashwani Kumar & Ors.

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr. Raman Chawla, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (Oral)

CM No. 19622-CII of 2019

Allowed as prayed for.

CM No.20095-CII of 2019

For the reasons mentioned in the application, the applicant-petitioner is allowed to place on record the amended case title, plaint, orders and application as Annexure P-17 (collectively) and supplementary affidavit as Annexure P-18, subject to all just exceptions.

CM stands disposed off.

CR No. 5946 of 2019

The petitioner in this revision happens to be the third party objector in the execution proceedings pending before the Court of Ld. Additional Civil Judge (Sr. Division), Loharu, District Bhiwani.

2 Objections were dismissed by the Ld. Court below with the following

observations:-

“One of the objection has been taken by way of third party objections is that the suit property is being possessed by the objectors Smt. Murti Devi and Mukesh Sharma being the legal heirs of the deceased Rambilas, and thus, the execution in hand cannot be executed against them. It is pertinent to mention here that there is no document on the case file which could show the possession of the third party over the suit land. In the absence of any such material, the third party objection taken by the aforesaid Murti Devi and Mukesh Sharma being the legal heirs of the Rambilas (since deceased) are not maintainable. (Relied upon “*Kulvinder Kaur Versus Surinder Tawar and others 314 PLR (2017-3)187*”).”

3 This Court has gone through the available material on record. The Jamabandi filed on behalf of the petitioner as Annexure P-15 is of the year 1996-1997 and stands in the name of the original owner/predecessor of the contesting parties namely Bihari Lal. No Revenue Entry has been shown to recognize the possession of the petitioner or her deceased husband-Rambilas, after death of Bihari Lal.

4 The mere fact that the petitioner's husband Rambilas had filed a suit for declaration on the ground of being owner in possession of the disputed land as per succession, in which the petitioners have now been impleaded as his Legal Representatives, in the opinion of this Court, *ipso facto* is not sufficient proof of possession since, admittedly, the Executing Court cannot consider the pleadings raised in such a suit on merits independently.

5 Attention of the Court is drawn to the affidavit of the Judgment Debtor-Ram Avtar, dated 02.11.2019 (Annexure P-13) in which it has been mentioned that the petitioner is in possession of the decretal land. This affidavit is also not helpful, since the deponent himself happens to be the Judgment Debtor and it would rather indicate some collusion on his part to protect possession of the land for which decree against him has been passed. Similarly this Court is not inclined to place reliance upon one common

affidavit sworn by four different persons to the effect that after death of her deceased husband-Rambilas, she (the petitioner) is cultivating the land and thereby has been in occupation of the disputed land, as identity of those deponents is neither verifiable nor such statement was given before any Competent Court of law.

6 For the aforesaid reasons, this Court finds no justification to interfere with the impugned order passed by the Ld. Court below.

7 Dismissed.

September 24, 2019
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[SUDIP AHLUWALIA]
JUDGE

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