

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

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**CR No. 235 of 2020
Date of decision : 14.1.2020**

Dilbagh Singh and others

.....Petitioners

Vs.

Harpal Singh alias Harpal Singh Chela and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gagandeep Jammu, Advocate, for the petitioners

Rajbir Sehrawat, J. (Oral)

The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 19.10.2019, whereby the Executing Court has dismissed the objections preferred by the petitioners/judgment debtors, in the execution proceedings, in which the decree holder/respondent No.1 herein, claimed that he had been dispossessed after the decree and that the possession be restored to him.

While referring to the pleadings and the orders passed by the Court below, learned counsel for the petitioners has submitted that the decree against the petitioners was only for injunction. Now, by misusing the decree, the respondent/decreed holder cannot get the relief of possession. If at all, he wants to claim possession from the petitioners, he has to file a separate suit. So far as the execution of decree in the present case is concerned, the decree holder has not specified as to how and when the petitioners had dispossessed the decree holder of the suit property after passing of the decree. In view of this situation, the Executing Court could not have ordered restoration of

possession to the decree holder. The counsel has relied upon the judgments in **'Nek Das and others v. Mohan Lal, (P & H) (2019-4) PLR 791'** and **'Satish Kumar v. Jagdish Chander, (P & H) 2019 (1) PLR 706'**.

Still further, it is submitted by learned counsel for the petitioners that the scope of Order 21 Rule 32 CPC is not for granting possession of the suit property to the decree holder. Order 21 Rule 32 CPC deals with twin situation, first; regarding the execution of the decree, and if the decree of injunction is otherwise not executable, then to resort to civil imprisonment or attachment of property of judgment debtor. The second part of the above said Rule talks about the violation of the decree passed by the trial Court. To claim any violation of the decree, the specific averments have to be made by the decree holder as submitted above, qua the nature of violation and the act required to be done to undo the said violation. In the present case, there is no such specific averment.

Having heard learned counsel for the petitioners and having perused the case file, this Court does not find any substance in the argument of learned counsel for the petitioners. It is not even disputed; and it has been so recorded by the Executing Court as well, that the question of possession qua the suit property had been specifically is in issue before the trial Court. The issue had been decided in favour of the decree holder and the possession over the suit property had specifically been held in favour of the decree holder. The said findings were challenged by the present petitioners before the Appellate Court. However, even the Appellate Court upheld the finding of the Trial Court to the effect that the suit property was in specific possession of the plaintiff/decreed holder. Accordingly, the Executing Court has to start with the

said finding and with presumption that the property was in possession of the decree holder as on the date of passing of the decree. Starting with any other point or assumption, would tantamount to disputing the finding of the trial Court, which had come in the judgments/decrees after a long and protracted trial, in which both the parties were at liberty to present their respective cases. So far as the Executing Court is concerned, it could not have gone beyond the decree to dispute the possession in favour of the decree holder. Therefore, the Executing Court has not committed any irregularity or illegality in accepting that as on the date of decree, the possession of the suit property was with the decree holder.

The petitioners/judgment debtors have not claimed either in their objections; or even before this Court; that the judgment debtors are not in possession of the suit property; as of today. Rather, it is the case of the petitioners that the petitioners/judgment debtors have throughout been in possession of suit property and the decree holder had got a decree; based upon a factually wrong finding recorded by the Trial Court that he was in possession. I am afraid that this cannot be the scope of objection to be entertained on behalf of the judgment debtor. An execution of a decree, pre-supposes the validity of the decree, whereas, the argument of learned counsel for the petitioners is indicative of disputing the validity of the decree itself. Although the petitioners claim that to dispute the findings of the trial Court they have filed regular second appeal before the High Court, however, it is not even disputed that there is no stay from the High Court as such. Bare provision of the CPC prescribes that in case of appeal, mere filing of an appeal would not be taken as a stay against the judgment and decree of the Courts below. Hence,

mere pendency of the appeal cannot be taken as any ground to dispute the concurrent findings of facts recorded by the Courts below.

Although learned counsel for the petitioners has laid much stress on the fact that to seek execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 of Order 21 CPC do not prescribe any such condition. Rather, Order 21 Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 of Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. **“Samee Khan v. Bindu Khan, 1998(4) RCR(Civil) 125 (SC)”** to mean that in an execution proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in **‘Kapoor Singh v. Om Parkash, 2009(4) PLR 178’**. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings.

Although, learned counsel for the petitioners has submitted that there are no specific pleadings qua the dispossession of the decree holder by the present petitioners, however, this Court finds this submission to be factually incorrect, as well as legally unsustainable. The Executing Court has

proceeded to issue warrants of possession, for restoration of the same, only after having been satisfied that the possession is not with the decree holder, and that a decree holder has duly pleaded that he has been dispossessed by the judgment debtors. Needless to say that the original decree had found the decree holder to be in possession. So far as the argument of making the pleadings more specific is concerned, this Court finds the argument to be totally vague. There are no units of measurement of specificity of the pleadings of the parties. Any introduction of any language like this, would make the implementation of the provision of Order 21 Rule 32 CPC as highly subjective, which is not contemplated by the provision itself. Bare perusal of Order 21 Rule 32 (5) CPC does not contain any such requirement, as sought to be argued by learned counsel for the petitioners/judgment debtors. In all its language, the above said Rule and Sub-Rule is pure and simple. If in an execution of a decree, the Court finds that the judgment debtor has been dispossessed, the Executing Court can very well issue warrants of restoration of possession. Only that much has been done in the present case. Accordingly, this Court does not find any illegality or perversity in the order passed by the Court below.

Finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

14.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No