

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

**Civil Revision No.1652-2018
Date of Decision:30.1.2020**

Paramjit Kaur

...Petitioner

Versus

Balkar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.S.Manaise, Advocate
for the petitioner

Mr.Chanakya Batta, Advocate for
Mr.G.S.Bhatia, Advocate
for respondent No.1

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the order dated 6.12.2017 passed by the Additional District Judge, Gurdaspur, by which order dated 27.2.2017 passed by Civil Judge (Jr.Divn.) Gurdaspur, was upheld and the objections of the petitioner/judgment debtor dismissed.

2. On the request of Mr.Manaise, respondents No.2 and 3 are deleted from the array of parties. They were the defendants who sold the property to the petitioner and to respondent No.1. The vendors first sold the suit property to petitioner Paramjit Kaur covering the entire residential house. Paramjit Kaur filed a suit alleging she came into possession of the plot admeasuring 18 Marlas. Respondent-Balkar Singh was a prior vendee of the property purchasing 9 Marlas from respondent No.2-Rajeshwar Singh from out of 18 Marlas of land. Parmjit Kaur was proceeded against ex parte by court order.

3. There is no need to refer to her litigation with any detail since her counsel admits that the decree has attained finality against Paramjit Kaur with the dismissal of the appeals etc.

4. Decree holder Balkar Singh took out execution proceedings before the executing Court at Gurdaspur. Paramjit Kaur raised an objection on expiry of limitation in filing the execution application on the plea that the execution application by decree holder was filed beyond 12 years of the decree dated 12.11.2002. This objection has been overruled by the learned Additional Civil Judge (Senior Divn.), Gurdaspur, vide order dated 27.2.2017 holding that the execution proceedings were within limitation from the date of execution and registration of the sale deed i.e. 10.2.2011.

5. The appeal has been dismissed on 6.12.2017. I do not find inherent defect or any infirmity in the reasoning adopted by the execution Court in passing a fair and proper order holding the suit maintainable, which is sound in law.

6. The learned counsel for the petitioner had secured admission of this matter citing the law in “Manohar Lal vs. Sunder Lal”; 2016(2) PLR 261 while contending that period of 12 years had already elapsed from the date of passing of the decree and the second execution application would not consequently be the first decree. I fail to see how this judgment helps the petitioner. Balkar Singh became the original owner of his share of the property transferred by the vendor as its true owner. There is no limitation on the true owner to seek possession from the date his rights in immovable property were created i.e. the date of the sale deed got executed by Court Commissioner when vendor failed to come forward to co-operate in registration of property before the Sub Registrar. Learned counsel would

refer to Article 134 of the Schedule to the Limitation Act, 1963 to support his case, which is reproduced as follows:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
134. For delivery of possession by a purchase of immovable property at a sale in execution of a decree	One year	When the sale become absolute.

7. The execution application was filed after 12 years of the decree but one year from the date of sale deed. Till the sale was not executed by registration before the Sub-Registrar, Balkar Singh had not become the “absolute” owner. Limitation would start running from the day of transfer of right, title and interest in the suit property. Therefore, Article 134 does not apply in the facts of this case. The date of registration of sale is 10.2.2011 and the execution was filed on 28.7.2015 which is certainly within limitation to claim possession of the suit property. The first appellate Court has in the impugned order dated 27.2.2017 assigned the following reasons to declare execution application under Order 21 Rule 35, CPC was not barred by limitation observing as follows:

“...The facts discussed above are almost the same as of proposition in hand, wherein the suit of decree holder has been decreed on 12.11.2002 and the sale deed has been executed in his favour on 10.2.2011 which is very much within the limitation of 12 years. The present execution for possession on the basis of sale deed dated 10.2.2011 is within period of 12 years as period of 12 years is to be counted from the date of execution of sale deed i.e. 10.2.2011. Applying 12 years from 10.2.2011, the present execution application is very much within the period of limitation. Further it must be kept in mind that the purpose for execution proceedings is to enable the decree holder to obtain

the fruits of his decree. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should in all case, be executed notwithstanding such bar or prohibition a rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree. With these observations it is concluded that the Executing Court is bound to help the decree holder to get his decree implemented and satisfied as per procedure of law. The present execution application for possession is very much within the period of limitation. Therefore, the objections of JD, on the point of period of limitation, are dismissed. Let warrant of possession of JD be issued for 9.5.2017.

8. The Judge has correctly cast aside mere technicalities and fulfilled the purpose of execution proceedings, which is to enable the decree holder to obtain the physical fruits of his decree for possession when title to suit property is perfected by determination of rights declared by the court. These reasons recorded in the above reproduced extract of the judgment appeal to me in promoting substantial justice and abiding by the law. I would only add that the moment the sale deed was registered and Balkar Singh had become the true owner of a part of the property, the judgment-debtor in possession would become a persona non grata and can be compelled to deliver possession to the decree holder.

9. However, if there is any dispute regarding which part of the total 18 Marlas of land/plot falls to the share of respondent- Balkar Singh,

who purchased half the property, then parties have the option of initiating partition proceedings between themselves before the appropriate court.

10. As a result of the above discussion, I do not find any substance in the petition. The petition is consequently dismissed. No costs.

January 30, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No