

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

**CIVIL REVISION No.6731 of 2019 (O&M)
DATE OF DECISION : 24th FEBRUARY, 2020**

Kashmir Singh (Deceased) Through LR.

.... Petitioners

Versus

Gurbachan Kaur & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Dheeraj Mahajan, Advocate for the petitioner(s).

Mr. Ranjit S. Dhiman, Advocate for respondent No.1.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 227 of the Constitution of India challenging order dated 16.09.2019 passed by the Executing Court, whereby the objections filed by the petitioner has been dismissed.

Brief facts giving rise to the present petition are that respondent No.1 had filed suit for possession against Kashmir Singh, the predecessor-in-interest of the present petitioners, qua the land measuring 13 Kanal 12 Marlas comprised in Rectangle No.17, Killa No.19/2/1 (5-0), 19/2/2 (1-0), 20/1 (6-0) and in Rectangle No.17, Killa No.20/2 (1-12), situated at village Dugri, Tehsil and District Gurdaspur. The same was decreed by the trial court vide judgment and decree dated 05.02.2007. Although earlier also, the execution petition was filed by the decree holder, however, the same was dismissed as withdrawn. Later on the current execution petition was filed on 13.10.2018. However, it turned out that by this time, the judgment debtor had already expired.

Therefore, the decree holder applied for brining on record the legal representatives of the judgment debtor. The said application was allowed by the Executing Court vide order dated 15.01.2019. On appearing before the court, the petitioner(s), who are the legal representatives of original Judgment Debtor, had taken objection that the execution had become time barred because they had been served notice of the execution first time only for 26.03.2019, which was after 12 years from the date of decree, which is the prescribed period of limitation for getting the decree executed. Another argument was that since the earlier execution petition had been withdrawn by the decree holder, therefore, the subsequent execution would stand barred by principle of *res judicata*. It is these objections, raised by the petitioners, which have been dismissed by the Executing Court. Hence, the present petition has been filed.

Arguing the case, learned counsel for the petitioners has submitted that since, for the first time, the petitioners have been served notice for 26.03.2019, therefore, so far as the petitioners are concerned, the execution of the decree has become time barred. The Executing Court cannot execute any decree against them after expiry of twelve years from the date of decree. In this regard, the counsel has relied upon judgments of this Court rendered in ***Manohar Lal versus Sunder Lal, 2016(2) PLR 261*** and ***M/s. B. S. Industries Darapur & another versus State Bank of Patiala, Hoshiarpur & others 2013(15) RCR (Civil), 393.*** Secondly, it is submitted by the counsel for the petitioners that the Executing Court has wrongly discarded the plea of; the execution being barred by *res judicata*.

On the other hand, counsel for the respondent No.1/decreed holder has submitted that since even the current execution petition was filed on 13.10.2018, therefore, by any means, the execution petition is well within time. It is further contended that since the petitioners are claiming only under the original judgment debtor, therefore, they cannot raise argument that the execution against them would start on 26.03.2019; when they were served notice for the first time. Even against them, the execution proceedings shall be deemed to have been filed on 13.10.2018 only, in which they have been impleaded as legal representatives of the original judgment debtor. It is also argued that execution is not hit by principle of *res-judicata*.

Having considered the arguments of learned counsel for the parties, this court does not find substance in the argument of counsel for the petitioners. So far as the point of limitation is concerned, undisputedly, the date of decree in the present case is 05.02.2007. Even the current execution application has been filed well within the prescribed period of 12 years on 13.10.2018. Hence, the execution application filed by the decree holder cannot be dismissed on the ground of limitation, as such. Although learned counsel for the petitioner has submitted that so far as the present petitioners are concerned, they had got notice of execution petition only for 26.03.2019, which happens to be beyond the period of 12 years, however, this fact is totally insignificant. The limitation, wherever prescribed, is to be seen as on the date; and for the purpose of; approaching the Court and not with reference to the date of service of any notice or summons upon any party. In the present case, undisputedly, the execution was filed with the court well within the

limitation. The executing court is dealing with that only. The argument of the counsel for the petitioners; to make 26.03.2019 as the reference date for the purpose of limitation, is totally misconceived. The petitioners/legal representatives of the judgment debtor are claiming only under the original judgment debtor. The decree is not being executed against them in their independent capacity, nor was the decree against them in their independent capacity. Therefore, the present petition, which was originally filed against the original judgment debtor within the limitation, shall have to be taken as validly filed within the limitation against the present petitioners/legal representatives of the judgment debtor as well. Hence, the argument of the counsel for the petitioners qua the execution petition being time barred, is totally non-sustainable and thus; the same is rejected.

Although, learned counsel for the petitioners has also raised, though half heartedly, another argument qua execution petition being barred by *res-judicata*; on account of earlier two execution petitions having been withdrawn or having been dismissed in default, however, this court finds that the Executing Court has rightly rejected the said argument. No provision of the CPC has been brought to the notice of this court, which may make the second execution application as barred by *res-judicata*, even if earlier execution petition was not decided on merits. Although, the learned counsel for the petitioners has referred to explanation attached to the Section 11 of the CPC, which makes the concept of *res-judicata* applicable to the execution proceedings as well, however, the Section 11 C.P.C. itself shows that the concept of *res judicata* would be applicable only in the case where the matter, which is

substantially involved in the subsequent execution petition, had already been adjudicated and decided in the earlier proceedings. In the present case, no such adjudication had taken place. Needless to say; that the bar of second suit, as contemplated under Order 23 Rule 3, is not made applicable by the statute to the execution proceedings. Rather, the provisions, as contained in Order 23 Rule 4, specifically excludes the applicability of Order 23 to the proceedings of the execution. Hence, even the argument qua applicability of *res-judicata* is liable to be noted only to be rejected.

Although, learned counsel for the petitioners has relied upon the judgments rendered in *Manohar Lal (supra)* and *M/s. B.S. Industries Darpur & another (supra)*, however, both the judgments are totally distinguishable. In both those cases, the second petition was filed after the period of 12 years, as counted from the date of decree, had already expired.

One more argument has been raised by the counsel for the petitioners that in execution proceedings the separate physical possession cannot be delivered to the decree holder; because the petitioners/judgment debtors are also the co-sharers with the decree-holder. Therefore, unless property is partitioned by the appropriate Court, no specific Killa number can be given to the decree holder. However, this Court does not find any substance in this argument as well. Perusal of the relief granted to the plaintiff in the decree itself shows that he had claimed possession of specific khasra numbers and specific quantity of the land comprised in those khasra numbers and the said relief has duly been granted. The entire land claimed by the decree holder is

comprised in those entire specific khasra numbers only. Hence, the Executing Court is bound to order delivery of possession to the decree-holder qua those khasra numbers only. Needless to say that the Executing Court cannot go behind the decree. Otherwise, through the appeals filed by the judgment debtor, the decree passed in the main suit has already attained finality right up to the Supreme Court.

In view of the above, finding no merit in the present petition, the same is dismissed.

24th FEBRUARY, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>