

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

CR-14299-2018 (O&M)

Date of decision : 31.01.2020

Om Prakash

...Petitioner

Versus

Kirpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Som Nath Saini, Advocate for the petitioner.

Mr. Kanwal Goyal, Advocate for respondent No.1.

Mr. Amarjit Markan, Advocate
for respondent Nos.6, 9, 10 and 11.

ANIL KSHETARPAL, J.

Judgment Debtor has filed the present revision petition under Article 227 of the Constitution of India assailing the correctness of order dated 30.11.2018 issuing warrants of possession after removing the crop with the help of revenue officials and concerned SHO of the Police Station in an execution petition.

Some facts are required to be noticed.

Gurdial Singh was owner of the property. He died on 19.09.1994. He had left behind two sons and six daughters (one daughter Shakuntla is dead). Paramjit Singh is son of Mohinder Singh son of Gurdial Singh. In other words, he is grandson of Gurdial Singh. Paramjit Singh on

the basis of alleged Will executed by Gurdial Singh, got the land recorded in his name and thereafter sold the same to the petitioner and two others by executing three sale deeds on 29.09.1995 and 04.10.1995. It is also alleged that Paramjit Singh got his own father and uncle involved in a false case for murdering late Sh.Gurdial Singh. The criminal Court has acquitted the accused.

A civil suit was filed by Kirpal Singh and Mohinder Singh sons of Gurdial Singh seeking declaration that the sale deeds executed by Paramjit Singh were illegal, null and void and not bindings on the rights of the plaintiffs and defendant Nos.2 to 8. In the aforesaid judgment, it was held that defendant No.1-Paramjit Singh failed to prove the Will. Consequently, the Court held that defendant No.1-Paramjit Singh did not had any right to execute the sale deeds. The Court further held that defendant No.9 to 11 are not bona fide purchasers. The learned Court passed a decree, operative part whereof reads as under:-

*“It is ordered that the suit of the plaintiffs is hereby decreed with cost and the defendants No.2 to 8 are declared as joint owners in equal shares of the property in dispute, fully detailed in the head note of the plaint and the plaintiffs are declared as owners and in exclusive possession of the house and Bara marked as A,B,C,D, in the site plan and the defendants No.1 to 9 to 11 have got no right and interest of the property and the sale deeds executed by defendant No.1 in favour of defendants No.9 to 11 in respect of agricultural land and Bara are declared as illegal, null and void and not binding upon the rights of the plaintiffs and the defendants No.2 to 8 and **plaintiffs are entitled to relief of joint possession of the land in dispute, fully detailed in the head***

note of the plaint and the defendants No.9 to 11 are hereby restrained from making any construction or alienation of the suit property.”

Decree holders thereafter filed an application for execution of the decree by issuing warrants of possession. The petitioner, who was defendant No.10 in the aforesaid suit, filed the present revision petition against the order passed by the Court issuing directions for delivery of possession.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel appearing for the petitioner has submitted that there is no decree for possession and, therefore, warrants of possession could not be issued. He submitted that decree is only for joint possession and the decree holders are not entitled to delivery of actual physical possession till the joint property is partitioned by way of metes and bounds. He further submitted that one of the daughter of Gurdial Singh had entered into an agreement to sell and, therefore, the petitioner is entitled to continue in possession.

On the other hand, learned counsels appearing on behalf of the respondents-Decree Holders have submitted that the petitioner is neither co-owner nor has any right, title or interest in the property. They submitted that as per the judgment passed, the sale deed executed in favour of the petitioner and others has already been set aside. The aforesaid judgment has been upheld by the Hon'ble Supreme Court. Hence, they submitted that the petitioner has no right, title or interest in the property. Hence, he has no

right to stay in the land.

Learned counsels further submitted that there is a decree for possession in favour of the plaintiffs. Learned counsels submitted that the Court has passed a decree for possession.

On careful reading of the decree passed, it is apparent that although the decree as passed is not happily worded, however, it is apparent that after declaring the plaintiffs and defendant Nos.2 to 8 as joint owners in equal share of the property in dispute, the Court also further ordered that the plaintiffs are entitled to relief of joint possession of the land in dispute and defendant Nos.9 to 11 were restrained from making any construction or alienation of the suit property. Thus, once the plaintiffs have been held entitled to relief of joint possession of the land in dispute and defendant Nos.9 to 11 are no more co-owners in the aforesaid joint land, therefore, they are not entitled to continue in possession. The decree passed in the present case cannot be said to be only a decree for declaration. The Court has, in the present case, passed a decree holding that the plaintiffs are entitled to relief of joint possession of the land in dispute. The word 'joint' has been used because the plaintiffs are jointly entitled to the possession. The manner in which learned counsel for the petitioner wants the Court to read the decree, is not correct. Learned counsel for the petitioner submits that the relief of joint possession only means that the plaintiffs are entitled to symbolic possession.

This Court has considered the submissions. However, find no substance therein.

In the facts of the present case which have been noticed above,

the plaintiffs have been held entitled to relief of joint possession and the sale deeds executed in favour of defendant Nos.9 to 11 have already been set aside and declared illegal, null and void, not bindings on the rights of the plaintiffs and defendant Nos.2 to 8. In these circumstances, the decree sought to be executed cannot be said to be only a decree for declaration.

Next argument of learned counsel for the petitioner is also without any substance because the agreement to sell, if any, does not create any right in the property.

Keeping in view the aforesaid facts, there is no ground to interfere.

Accordingly, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

31.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No