

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

CR 7811 of 2014

Date of Decision: July 19, 2021

Iqbal Singh

...Petitioner

Versus

Raj Dulari and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Salathia, Advocate
for the petitioner.

Mr. S.S. Sodhi, Advocate
for respondents no. 1 to 3.

Mr. Anupam Sharma, Advocate
for respondent No. 5.

Mr. Sumit Jain, Senior Standing Counsel
for U.T. Chandigarh.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-
19.

Initially one Bant Singh @ Balwant Singh was owner of 08 Kanals 0 Marlas (claimed to be 10.5 marlas) land bearing Khewat No. 559 Khatauni No. 631, Khasra No. 58/26, HB No. 375 situated in village Manimara, U.T. Chandigarh. Bant Singh @ Balwant Singh vide sale deed dated 06.11.90 (Ex. P-1) sold 7.5 marlas of this land to Usha Rani respondent No. 5 and further Usha Rani sold out of this land so purchased a plot measuring 610.5 square feet vide registered sale deed dated 28.08.1991 (Ex. P-3) to Sawan Ram (now represented by his legal heirs Raj Dulari, Munish Puri and Virindera Puri respondents No. 1 to 3). By another sale deed dated 11.04.1994 (Annexure P-4) Bant Singh @ Balwant Singh sold 2.5 marlas of his land to Iqbal Singh (present petitioner). It is, thereafter, a dispute between the parties took place whereby Sawan Ram filed a suit for possession of one room of house No. 48 situated in Subhash Nagar Manimajra measuring 610.5 square feet which is duly depicted by way of measurements in the head note of the plaint. The Court of learned Civil Judge,

Senior Division vide judgment and decree dated 22.08.2007 decreed the suit of the plaintiff Sawan Ram and relief is reproduced as under:-

“RELIEF

In view of my issue wise findings the suit of the plaintiff decreed with costs to the effect that plaintiff is entitled for decree for possession of property as fully described and alienated in his favour vide Ex. P-3 and shown in Ex. P-5 as Mark C. Decree sheet be prepared accordingly. File be consigned to record room after due compliance”

As is submitted before this Court by the two sides no challenge was made to this judgment and decree by any of the parties and, thus, as on date has since then attained finality.

An execution application was filed by the legal representatives of deceased decree holder Sawan Ram,

namely, Ram Dulari wife, Munish Puri and Virindera Puri being son and daughter, respectively, against Bant Singh @ Balwant Singh, Iqbal Singh and Usha Rani. The Court of learned Civil Judge, Junior Division, Chandigarh vide order dated 30.04.2014 passed the following order-

“RELIEF

In view of discussion on the above issues, it is held that the decree holder is entitled for possession of the property as shown in demarcation report Ex.DH/1 and site plan Ex.DH/2. The objections of the objector are hereby dismissed. There is no order as to costs. Warrants of possession be issued for 26.07.2014”

Against this order Iqbal Singh present petitioner then appellant filed an appeal. The Court of learned Additional District Judge, Chandigarh vide impugned findings dated 28.10.2014 dismissed the appeal and affirmed the findings of the trial Court. It is against these findings, the present invocation

by way of instant revision has come about.

Appreciating the submissions of the counsel for the contesting parties, it is duly admitted and accepted that land in question out of which the dispute has arisen is unpartitioned land assessed to revenue which is denoted by Khasra No. 58/26. It is also not put to question that Bant Singh @ Balwant Singh sold part of his land 7.5 Marlas to Usha Rani who further sold 610.5 square yards to the decree holders and another 2.5 marlas Bant Singh @ Balwant Singh had sold to Iqbal Singh, the present petitioner. It is nowhere suggestive in the judgement and decree in question passed by the learned Civil Judge (Junior Division) or subsequent thereto from any record as to the total area of ownership of Bant Singh @ Balwant Singh in that very particular chunk of land. Assuming what has come up before this Court that 7.5 marlas was sold to Usha Rani and 2.5 marlas of land was sold to Iqbal Singh which comes to total 9.10 marlas and which does not match with the title of the land measuring 10.5 marlas admitted to be owned by

Bant Singh @ Balwant Singh then of Khasra N. 58//26. It is undisputed there on the records that Usha Rani out of her purchased land, i.e. 7.5 marlas had sold through sale deed dated 28.08.91 (Ex. P-3) land measuring 610.5 square feet of property to decree holder Sawan Ram etc. and, therefore, relief if any by Sawan Ram would accrue only against Usha Rani and not Bant Singh @ Balwant Singh, Iqbal Singh and Gurbaz Singh. More over, Sawan Ram has purely filed a suit for possession and he ought to have filed suit seeking relief of partition, demarcation with possession of his share of the purchased plot through sale deed (Ex. P-3). Only the vendor of Sawan Ram is accountable and under obligation to give possession to Sawan Ram of his purchased plot vide sale deed (Ex. P3) and not other judgment debtors. Since Iqbal Singh admittedly had no role to play in this alienation by Usha Rani in favour of Sawan Ram decree holder and, therefore, he cannot be prejudiced by the execution of the present judgment and decree. What one could decipher from the claims and counter

claims of the parties is that the trial Court at the very first instance ought to have got amended the relief and also to ensure that there is proper demarcation and partition of the property of Bant Singh @ Balwant Singh amongst its various vendees so as to put to rest any controversy and dispute between the parties of this suit. Rather by passing such a decree for simplicitor possession in the absence of clear cut identification of the property it has led to delayed relief and creating more complications for execution of the decree besides prejudice and agony to other vendees of this land erstwhile owned by Bant Singh @ Balwant Singh. Moreover, Iqbal Singh then respondent No. 2 is claiming to have purchased his part of the property vide sale deed dated 11.04.1994 (Ex. P-4) much after the sale deed executed by Usha Rani in favour of Sawan Ram and, therefore, further necessitates that the Court ought to have been vigilant and suggested the parties to get the land partitioned/demarcated at the earliest for a comprehensive adjudication of the dispute. Furthermore, Iqbal Singh petitioner

had secured permission from the civic authorities for carrying construction of his house at the site is another distressing feature in this case for the decree holder.

The learned executing Court had gone beyond the decree and on his own vide order dated 25.05.2010 issued directions to the Tehsildar (Revenue) to demarcate the land bearing Khasra no. 58/26 Khewat No. 559 Khatauni No. 631 and the reports have been taken on records as Ex. DH/1 and DH/2 which evidence was not there on the records at the time of passing of the impugned judgment and decree. It is purely on the basis of demarcation report Ex. DH/1 and site plan DH/2 had ordered execution of the decree which is contrary to the canons of law as even no notice of the same was given to the other side or reply/objections invited and is a unilateral one sided order of the executing court. Thus, prejudicing the case of the petitioner and others. Since it is Usha Rani who has sold out of her share plot to decree holder and she is under legal obligation by virtue of “**Principle of Equity**” to compensate

Sawan Ram and ensure he gets his plot so sold to him vide sale deed (Ex. P3). What the Courts below have done is that they have gone ahead with the execution of the decree dated 22.08.2007 which in the light of such a serious ambiguity where the relevant portions of the land have not been demarcated nor partitioned have caused irreparable loss and injuries to other innocent persons who have purchased small plots out of their hard earned money to enable them to have roof over their heads. In the light of the impugned judgment, the Executing Court/CJJD, Chandigarh has grossly erred and fell into error by purely ordering possession on the basis of unsubstantiated demarcation report Ex. DH/1 and site plan Ex. DH/2 which has been obtained at the back of the parties necessitating intervention of this Court.

In the light of the same, it would be appropriate for the parties to this suit through Executing Court to have recourse to partition and demarcation of the entire land of Bant Singh @ Balwant Singh especially that of Usha Rani so that original

vendor of Sawan Ram that is Usha Rani respondent No.5 hands over possession of plot subject matter of sale deed dated 28.08.1991 (Ex. P-3) to the D.H. It is brought to the notice of this Court that Usha Rani is still in occupation of 7.5 marlas originally purchased by her from Bant Singh @ Balwant Singh through sale deed dated 06.11.90 (Ex. P-1) and ought to have give up her claim and right over 610.5 square feet of this property to the decree holder. The impugned order as such is set aside by acceptance of this revision.

However, it is made clear that this order will not come in the way of DH moving the Executing Court afresh.

July 19, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No