

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104

Civil Revision No.1026 of 2021

Decided on : 13.07.2021

Balvir Singh (since deceased) through his legal heir Avtar Singh

... Petitioner(s)

Versus

Kartar Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rai Singh Chauhan, Advocate
for the petitioner(s).

ANIL KSHETARPAL, J. (Oral)

The judgment-debtors have filed this revision petition under Article 227 of the Constitution of India, assailing the correctness of the order dated 08.03.2021, passed by the learned Additional Civil Judge (Sr. Division), Ferozepur, while dismissing their objection petition.

The decree for possession by way of specific performance of the agreement to sell against the petitioners has become final. In pursuance to the aforesaid decree the sale deed has also been registered in favour of the decree-holder. The operative part of the decree dated 28.02.2017, reads as under:-

“It is ordered that suit of the plaintiff Kartar Singh succeeds and the same is ordered to be decreed against the defendants for specific performance of the agreement to sell dated 12.01.2007 Ex.P2 executed by deceased defendant Balvir Singh in favour of plaintiff with regard to suit land measuring 29 kanal 0 marla being 1/3rd share out of the land comprised of Rect. no.33, Killa No.8(8-0), 9(7-8), 10(8-0), 11(8-0), 12(7-8), 13(8-0), 19(7-8), 20(8-0), 21(8-0), 22(7-8), 18(8-0), 23/1(1-10)

situated at village Tahli Wala Tehsil and District Ferozepur, khewat no.39, Khatauni no.127, Hadbust no.236. The defendants having being legal heirs of deceased Balvir Singh have inherited his estate as admitted by DW-1 Avtar Singh during his cross-examination, as such, they are directed to execute the sale deed of suit property in favour of the plaintiff after receiving the balance sale consideration within period of two weeks from receipt of certified copy of this judgment and decree and to put the plaintiff into actual and physical possession over the suit land failing which the plaintiff will be entitled to get the sale deed executed and registered through court of law after getting the balance sale consideration deposited in the court within one month after the expiry of aforesaid period.”

The judgment-debtors have objected to the delivery of actual possession on the ground that the decree is with respect to undivided share in a joint land. He submits that in absence of partition of the land, the actual physical possession cannot be delivered. He submits that the decree as such is not executable.

In response to the Court question, learned counsel representing the judgment-debtors has fairly admitted that share of the judgment-debtors is only 1/3rd which already stands transferred in favour of the decree holder. Thus, the judgment-debtors are no more co-owners in the joint land. In such situation, judgment-debtors have no right to continue in possession. They are bound to deliver the possession of the land which is in their occupation. No doubt, such delivery of possession shall be subject to the rights of other co-owners.

Still further, the Executing Court is to execute the decree of the Court. As per the decree, the decree holder has been held entitled to possession of the land. The judgment-debtors did not object to the passing

of the decree for possession while defending the suit.

Keeping in view the aforesaid facts, no ground to interfere with the order passed by the Executing Court is made out.

Hence, dismissed.

13.07.2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No