

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

ESA-54-2019(O&M)

Date of decision:-9.12.2021

Mohinder Kaur

...Appellant/Objector

Versus

Harmesh Kumar and others

...Respondent/Decree Holders

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.S. Joshi, Advocate
for appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Karnail Singh son of S.Bakshish Singh, resident of House No.31, Anand Nagar-A, Patiala had brought a Civil Suit No.9 dated 24.5.1997 against defendants Dharam Singh and Baldev Singh, seeking a declaration that he is owner in possession of plots No.17 to 31 measuring 355 square yards bearing Khewat No.359, Khatoni No.751, Khasra No.54//7/2(0-2), 54//8/1/1(0-10) consisting of one room, six shops constructed therein, situated in village Jhill on Seona

Road, Tehsil and District Patiala since the date of its purchase by the plaintiff on 22.3.1991 and any document relating to the property in possession of defendant is illegal, null and void, not binding upon the rights of the plaintiff; in addition to that seeking possession of this property along with damages and mesne profits. That civil suit was decreed ex-parte on 24.5.2006 declaring the plaintiff to be owner, as such entitled to possession of the suit property.

2. The plaintiff filed an execution petition for getting possession of the suit property. One Mohinder Kaur – objector appeared and filed objections but those were dismissed by the Executing Court. She had filed an appeal against order passed by the Executing Court, which was also dismissed by District Judge, Patiala. She had come to High Court by filing a revision petition but was unsuccessful.

3. It may be mentioned here that subsequently Karnail Singh had transferred his rights in the suit property to Harmesh Kumar and Ompal, who stepped into his shoes. Then again Mohinder Kaur appeared and raised objections, which were resisted by Harmesh Kumar and Ompal. Those were dismissed by the Executing Court of Civil Judge (Jr.Divn.), Patiala vide order dated 9.12.2015. The operative part of the order being as under:

6. *After hearing rival contentions of both the parties and from the perusal of material on record, this Court is of the*

considered opinion that present objection petition filed by Mohinder Kaur is not maintainable and is bereft of any merits. Perusal of case file shows that execution has been satisfied. In the objection petition Mohinder Kaur objector has taken a plea that the purchased property measuring 33 sq. yards comprised in Khasra No.54//8/1/2(0-8) and it falls in the Khasra No.54//8/1/2(0-8) and the property for which the suit of the DH was decreed falls in Khasra No.54//7/2(0-2) and 54//8/1/1(0-10) and both the properties are comprised in different khasra numbers. Objector has pleaded to restore the possession of the objector. Perusal of sale deed as well as revenue record since 1966-67 shows that the property which was purchased by objector is comprised in Khasra No.54//8/1/2(0-8) and the property for which suit of DH was decreed is comprised in Khasra No.54//8/1/1(0-10) and 54//7/2(0-2). These properties are comprised in different Khatoni and Khewats. In the opinion of the Court the objection petition filed by the objector Mohinder Kaur is merely based on surmises and conjectures as in this execution petition when the possession has already been delivered to the DH duly admitted by the objector, so there is no provision to restore the possession at this stage. The present objection petition cannot be allowed merely on the saying of objector Mohinder Kaur. As the possession in this

execution petition has already been delivered to the DH, as such the present objection petition is not maintainable and is disposed of accordingly.

4. Again feeling dissatisfied, Mohinder Kaur had filed an appeal to the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who upheld the order passed by the Civil Judge (Jr.Divn.), Patiala and dismissed the appeal. Now Mohinder Kaur has come to this Court by way of filing the present appeal.

5. I have heard learned counsel for the appellant besides going through the record.

6. Objector – Mohinder Kaur, who had raised objections in the execution petition filed by original plaintiff Karnail Singh has already lost the battle up to this Court. Thereafter, she has initiated second round of litigation with Harmesh Kumar and Ompal, transferees of Karnail Singh. She has been unsuccessful at the level of Civil Judge (Jr.Divn.) Patiala and Additional District Judge, Patiala. Both of them have found the objections raised by Mohinder Kaur to be devoid of any merit. It has been observed that the property purchased by the objector is comprised in Khasra No.54//8/1/2(0-8), whereas the decree passed in favour of Karnail Singh is with regard to Khasra No.54//8/1/(0-10) and 54//7/2(0-2), which means that two properties are having different khasra numbers, different khatoni and

khewat numbers. The possession has already been delivered to the decree-holder, as such there was no occasion to restore the possession to the objector.

7. The application bearing CM-12821-C of 2019 filed in this appeal on behalf of the objector/appellant praying for appointment of Tehsildar/Naib Tehsildar, Patiala as Local Commissioner to inspect and demarcate the property in dispute cannot be accepted at this stage. Therefore, the application is dismissed. The appeal is also found to be without any merit and is dismissed accordingly.

9.12.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No