IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1343-2016(O&M)
Date of Order: 23.05.2022

Bhagwan Kaur (deceased) through her LRs **..Petitioner**

Versus

Gurdial Singh and others **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Dhruv Mittal, Advocate
for the petitioner

Mr. Surjit Singh Salar, Advocate
for respondent no.6 and 7.

Mr. Kulwinder Singh, Advocate,
for the applicant-Mr. Jagga Mal (CM-25614-CII-2018)

ANIL KSHETARPAL, J(Oral)

The decree holder assails the correctness of the order passed by the Executing Court while directing her to claim possession by way of partition of the property.

Some facts are required to be noticed.

Sh. Ganda Singh had left behind three natural heirs, namely, Sh. Randhir Singh, Sh. Kartar Singh and Smt. Balbir Kaur. Smt. Bhagwan Kaur (the petitioner, who has now died) was widow of late Sh. Randhir Singh who has filed a suit against Sh. Gudial Singh, Sh. Sarabjit Singh, Sh. Jagar Singh, Sh. Bahadur Singh, Sh. Jagdev Singh, claiming a decree of declaration that she is the exclusive owner and consequently, is entitled to possession of ½ share of the land which originally belonged to Smt. Kartar Kaur widow of late Sh. Kartar Singh. It is claimed that she is already owner of the remaining share. The aforesaid suit was decreed on 29.05.1985. The

NARESH KUMAR
2022.06.06 11:55
I attest to the accuracy and
integrity of this document

operative part of the aforesaid judgment is extracted as under:-

> "*43. In view of my findings on above issues and in view of my above discussion, the suit of the plaintiff is hereby decreed against the defendants to the effect that the plaintiff is declared to be the exclusive owner of the property in dispute as detailed in the cause title of the plaint and is entitled to the possession of the suit property. As a consequential relief the defendants no.1 and 2 are permanently restrained from alienating the suit property in any manner whatsoever to anyone else. Accordingly the suit of the plaintiff is hereby decreed against the defendants with costs. This decree shall be treated as exparte decree against the defendants no.3, 4 and 5. Decree sheet be drawn accordingly. File be consigned to the record room (Judicial) Patiala.*"

An appeal preferred by Sh. Gurdial Singh (defendant in the suit) is pending , however, the interim order was vacated on 04.09.2000. Thus, there is no impediment in implementation of the decree.

The respondents are claiming to be co-sharers on the strength of a sale deed executed by Smt. Sukhminder Kaur daughter of Smt. Balbir Kaur. In a separate suit, Smt. Balbir Kaur has also been held entitled to 1/4th share against which a Regular Second Appeal is pending before this Court.

It has also been brought to the notice of the Court that the previous objections filed by Sh. Ram Singh, grand father of the objectors were dismissed and the aforesaid order has been upheld by this Court.

The Executing Court has directed the delivery of symbolic possession to the petitioner while relegating her to the remedy of partition of the property by the revenue authorities. The petitioner has filed the present revision petition challenging the correctness of the aforesaid order.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

NARESH KUMAR
2022.06.06 11:55
I attest to the accuracy and
integrity of this document

A miscellaneous application has been filed by Sh. Jagga Mal claiming to be purchaser of a specific parcel of the property measuring 30 bighas and 1 biswa from Sh. Randhir Singh, dated 08.09.1971.

The learned senior counsel representing the petitioner submits that he will not execute the decree qua the land purchased by Sh. Jagga Mal through sale deed dated 08.09.1971. He further submits that Smt. Balbir Kaur or Smt. Sukhminder Kaur were never in possession of any part of the property. He further submits that the decree in favour of Smt. Sukhminder Kaur is dated 18.11.1995. He submits that the objectors have only purchased the share in an undivided property, consequently, they are entitled to the suit property which will be subject to the decision of the Regular Second Appeal. However, he submits that there is a categoric decree in favour of the petitioner for delivery of possession and she should not be deprived of the possession on the ground that the objectors have subsequently purchased an undivided share in the joint property. He further submits that, in fact, the objectors are in possession of some part of the property through Sh. Ram Singh, who is a party to the litigation.

On the other had, the learned counsel representing the respondent submits that the objectors are in independent possession of the property.

On a Court question, the learned counsel representing the respondent failed to prove that Smt. Sukhminder Kaur, their vendor was ever in physical possession of any part of the property. The objectors have purchased the property vide sale deed dated 28.02.2006. The learned counsel representing the respondent failed to draw the attention of the Court to any fact of delivery of actual physical possession by Smt. Sukhminder

NARESH KUMAR
2022.06.06 11:55
I attest to the accuracy and
integrity of this document

Kaur in their favour.

Keeping in view the aforesaid facts, the objectors are only subsequent purchasers of some undivided share in the joint property. Such purchaser can get possession only after getting the joint property partitioned. The decree in favour of Smt. Bhagwan Kaur was passed in the year 1985. 37 years have elapsed already.

The Executing Court has failed to notice that the decree in favour of Smt. Bhagwan Kaur is for delivery of possession because the court has already held that Smt. Bhagwan Kaur is entitled to possession of the suit property. The suit property in the case was ½ share of the property because remaining ½ was already in possession of Smt. Bhagwan Kaur.

Hence, the revision petition is allowed. The order under challenge is set aside. The Executing Court is requested to issue warrants of possession of the property excluding the property purchased by Sh. Jagga Mal vide sale deed dated 08.09.1971.

All the pending miscellaneous applications, if any, are also disposed of.

May 23, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

NARESH KUMAR
2022.06.06 11:55
I attest to the accuracy and
integrity of this document