

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-148 of 2015(O&M)

Date of decision:30.03.2022

Waryam Singh

...Petitioner

Versus

Sunder Dass (deceased) through his LRs Raj Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Liaqat Ali, Advocate
for the respondents.

ANIL KSHETARPAL, J (Oral)

The judgment debtor calls into question the correctness of the order passed by the Executing Court while directing the delivery of possession. In a suit filed by the decree holder for grant of decree of possession by way of specific performance of the agreement to sell, the trial court passed a decree on 22.12.1993. The operative part of the decree reads as under:-

(A) Suit for possession by way of specific performance against the defendant relating to agricultural land measuring 2 bighas 10 biswas comprised in Khata No.15, khasra no.19/2-10 min situated at village Ibrahimpura Tehsil Malerkotla, for a total consideration of Rs.8750/- after deducting a sum of Rs.7200/- already paid on the basis of agreement dated 20.07.87 or other remedy or relief available to the plaintiff. In the alternative for recovery of Rs.8750/- detailed Rs.7200/- as earnest money paid and Rs.1550/- as damages.

(B) Suit for permanent prohibitory injunction against the defendant to the effect that the defendant be restrained to alienate, transfer in any manner of change the nature of

the land or to cut down the trees standing on the suit land mentioned in the head note of the plaint.

Value for the purpose of court fee & jurisdiction Rs. Affixed Rs.1017.

This suit coming on this the 22nd day of December before me for final disposal in the presence of Sh. N.C.Sharma counsel for the plaintiff and Sh. M.P.S. Shergill Adv., counsel for the defendant and it is ordered that the suit of the plaintiff for possession by way of specific performance of the contract dated 20.07.87 is hereby decreed with costs. The defendant has already received Rs.7200/- as earnest money at the time of execution of the agreement, while plaintiff shall deposit the balance sale price in this court within a period of one month and then he would be disputed land.

The defendant is also restrained from alienating the suit property in any manner in favour of any third person, except the plaintiff. The claim for alternative remedy is dismissed.”

Against the judgment and decree, the judgment debtor filed an appeal which was dismissed on 21.03.1996. The judgment debtor did not honour the decree forcing the decree holder to file an execution petition. On fulfillment of the conditions, the sale deed was executed in favour of the decree holder on 27.04.1999. Thereafter, he applied for delivery of possession on 14.06.2006. The judgment debtor objected to the decree on the ground that the execution petition filed on 14.06.2006, is barred by time. Further, the delivery of possession is objected to on the ground that the suit property is an undivided share in the joint land.

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

The learned counsel representing the petitioner while drawing the attention of the Court to Article 134 of the schedule attached to the Limitation Act, 1963, submits that for an execution petition by the purchaser to deliver possession of immovable property, the period of limitation of one

year begins to run when the sale becomes absolute.

Per contra, the learned counsel representing the decree holder, while relying upon the judgment passed by the Supreme Court in **Deep Chand and others vs. Mohan Lal (2000) 6 SCC 259**, contends that the successive applications for execution are permitted and the limitation would begins to run from the date when the decree becomes enforceable provided the case does not fall within the scope of the later part of the provisions in the third column. In substance, he contends that the delivery of possession was possible only after the sale deed was executed in favour of the decree holder on 27.04.1999. Hence, the limitation would begin to run from the date the sale deed was executed. Article 134 and 136 of the Limitation aCt, 1963, are extracted as under:---

“134. For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute
136. For the execution of any decree (other than a decree granting a mandatory (injunction) or order of any Civil Court.	Twelve years.	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought,takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”

Article 134 is applicable to a purchaser of immovable property at a sale in execution of the decree. Obviously, it refers to auction sale of the property in execution of the decree. However, Article 136 talks of execution of any decree, except a decree granting a mandatory injunction The Supreme Court, in a case having identical facts, has held that Article 136 of

the schedule attached to the Limitation Act, 1963 is applicable.

On a careful reading of the third column of Article 136, it is evident that the time from which the period begins to run has been divided into the various parts. First part is when the decree or order becomes enforceable. The second part is where the decree or any subsequent order provides for any payment of money, the period shall begin to run from the date of payment. The third part is where the delivery of the property is to be made at a certain date or at a recurring period. In that case, the period shall begin to run when the default in making the payment or delivery in respect of the decree in execution has taken place. The Supreme Court while dealing with the aforesaid aspect has held as under:-

“As noted earlier, the appellants-judgment debtors are found to have committed defaults in the payment of the instalments as agreed upon. The decree-holder was, therefore, entitled to get the sale deed executed in terms of the decree passed in his favour. He was held "entitled to possession" of the land as soon as the sale deed was executed and registered. It is not disputed that sale deed was executed in favour of the decree-holder vide court orders dated 23rd March, 1984. The execution application seeking possession of the land, the subject matter of the decree, was filed in April, 1994, admittedly, within a period of twelve years as prescribed under [Article 136](#) of the [Limitation Act](#). The High Court has rightly held that the decree for possession of land became enforceable only after the execution of the sale deed as was the direction of the court decreeing the suit. Before the execution of the sale deed in his favour on 23.3.1984, the decree-holder was not entitled to possession in terms of the decree. The decree, therefore, itself directed its execution after the execution of the sale deed in favour of the decree-holder. The decree-holder has been proved to have filed successive applications for the execution of the decree within the period of limitation. The language of [Article 136](#) cannot be strained in favour of the judgment-debtors who have been found to have not availed of the benefits of decree conferred upon them as they are proved to have failed to pay the amount even in instalments. The decree in the instant case is not capable of any other interpretation. As a general rule the

executing court should not find ways to dismiss the execution application as barred by time unless it is established, beyond doubt, that such an application was beyond limitation.”

In any case, the decree passed by the trial court on 27.12.1993 has merged with the decree passed by the Appellate Court on 21.03.1996. Therefore, in any case, the execution petition filed on 14.06.2006 was within limitation.

As regards the second argument, it may be noted that the Executing Court cannot travel beyond the decree. There is a decree for possession of land measuring 2 bighas and 10 biswas comprised in Khasra No.19(2-10) situated at village Ibrahim pura, Tehsil Malerkotla.

Hence, dismissed.

March 30, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No