

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1784 of 2018 (O&M)

Date of Decision: 12.05.2022

Ajmer Singh

... Petitioner(s)

Versus

Nirmal Singh (Now Deceased) through his legal representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Abhijeet P.S. Chaudhary, Advocate
for the petitioner(s).

Mr. Mohammad Yousaf, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The petitioner before this Court is an unfortunate decree holder. His application for execution of the decree has been dismissed by the Executing Court, though, the decree passed in the Civil Court in his favour is final.

2. The petitioner filed a suit for grant of decree of mandatory injunction for seeking directions to the defendant to vacate and handover the vacant possession of the property belonging to him. The petitioner, while claiming that the respondent/judgment debtor is his brother-in-law (wife's brother) filed the suit for the aforesaid relief. This suit was filed after the termination of license. The trial Court, on appreciation of evidence, passed a judgment dated 18.04.2014 and held as under:-

above, the suit of the plaintiff succeed and is hereby decreed for Mandatory Injunction for a direction to the defendant to vacate and handover the vacant possession of the property belonging to the plaintiff constructed over the plot measuring 50 sq. yards out of total property measuring 100 sq. yards forming part of Khasra No. 388 min, 388 min, Khata No. 713/845-846, as per Jamabandi for the year 1983-84 situated at village Jawaddi, Tehsil and District Ludhiana and as shown in red colour in the plan and for the grant of a decree of perpetual injunction restraining the defendant either himself or through his attorneys, agents, assignees from making any additions and alterations and further from demolishing any part of the abovesaid property and further restraining the defendant from delivering the physical possession of the suit property as detailed above to any third person on the basis of oral and documentary evidence and further for recovery of Mesne Profits on account of use and occupation charges to the tune of Rs.35,000/- with effect from 01.07.2006 upto the date of filing of the suit @ Rs.1,000/- per month and for further Mesne Profits from the date of filing of the suit till the vacation of the property @ Rs.1,000/- per month, with no order as to the cost. The parties are left to bear their own cost. Decree sheet be prepared accordingly and after due compliance the file be consigned to the record room”.

3.

The first appeal filed by the judgment debtor was dismissed on

31.05.2017. On an application filed by the petitioner for executing the decree, the Executing Court issued warrants of possession. On an application filed by the judgment debtor, the aforesaid warrants of possession have been recalled.

4. This revision petition has been filed assailing the correctness of the order passed by the Civil Judge (Junior Division), Ludhiana, recalling the warrants of possession on 18.11.2017.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book

6. From the reading of the operative part of the judgment, which forms a part of the decree, it is evident that a mandate was issued to the defendant to vacate and hand over the vacant possession of the property belonging to the decree holder. Such decree, though, in the form of a mandatory injunction, is, in substance, a decree for possession. The Executing Court has taken a very myopic view of the matter while observing that only attachment of the property of the judgment debtor and thereafter, his civil imprisonment can be ordered while executing a decree of mandatory injunction. The Executing Court is required to implement the decree as it exists. There is a specific mandate in the decree to the defendant to handover the vacant possession to the plaintiff. For all intents and purposes, this is a decree for delivery of possession.

7. In any case, the object of making provision for attachment of the property of the judgment debtor and his detention is to ensure the execution of a decree. Even otherwise, the Civil Court has inherent powers under Section 151 CPC to pass such an order in the interest of justice. If the

executing Courts start refusing to implement a valid decree, it will lead to travesty of the justice. It is well said that the problems of a decree holder starts after he gets the decree from the Court.

8. Keeping in view the aforesaid facts, the present revision petition is allowed. The order, under challenge is set aside. The Executing Court is directed to issue warrants of possession and ensure its implementation within a period of one month, from today.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 12, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No