

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

**CR-5585-2017 (O&M)
Date of decision : 17.03.2022**

Amarjit Singh

... Petitioner(s)

Versus

Jagdev Singh and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sherry K. Singla, Advocate for the petitioner.

Mr. J.S. Maanipur, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

Heard in virtual mode.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 21.07.2017 (Annexure P-3) passed by the Civil Judge (Senior Division), Bathinda vide which the warrants of possession of the suit property have been ordered in the execution application under Order 21 Rule 11 of the Code of Civil Procedure, 1908 filed by the respondent No.1-decree holder.

Learned counsel for the petitioner-judgement debtor would contend that the suit property is joint property and the total un-partitioned land holding of the petitioner is 116 kanals 13 marlas and out of the said land holding the sale deed has been executed qua 65 kanals 8 marlas. Learned counsel for the petitioner-judgement debtor would further contend that in the execution proceedings the sale deed has been executed as also symbolic possession has been handed over. However, actual physical possession could not have been ordered to be handed over inasmuch as

partition of the property has yet to take place. In support of his arguments, learned counsel for the petitioner-judgement debtor has relied upon the judgments of this Court in the cases of “**Tarachand & Anr. Vs. Ramnath & Anr.**” [2011 (52) RCR (Civil) 794], “**Baldev Singh (deceased) through LRs Vs. Harbhajan Singh & Ors.**” [2015 (3) RCR (Civil) 59] and “**Harjinder Singh (deceased) repleaded by LRs Vs. Ravinder Kumar**” [1996 (1) RRR 463].

Per contra, learned counsel for respondent No.1-decree holder has contended that the respondent-decree holder has paid the entire sale consideration and the sale deed has also been executed in his favour. Learned counsel for respondent No.1-decree holder would further contend that the agreement to sell pertains to the year 2007 and the respondent-decree holder would not be able to reap the fruits of his decree in case the physical possession is not handed over to him.

Heard.

It is trite that a co-sharer in possession of any specific portion of the land can sell his share qua the said specific portion to the vendee, however, the same would be considered as a sale of share out of the joint land.

In the present case, the sale deed has been executed in favour of the respondent No.1-decree holder and symbolic possession has also been given. However, the impugned order dated 21.07.2017 directing issuance of warrants of possession to the respondent No.1-decree holder has been impugned. The argument raised by learned counsel for the petitioner-judgement debtor that the respondent No.1-decree holder is entitled to get

only symbolic possession to the extent of a share, and that actual physical possession can be handed over only once he applies for partition is meritorious.

In the case of ***Tarachand & Anr.*** (supra), this Court has held as under :

“8. I have carefully considered the rival contentions. There is not even an iota of material on record to depict that any partition of joint land had taken place among the three brothers i.e Appellants and Respondent No. 2. The objectors/Appellants pleaded that they are in possession of the suit land along with other joint land to the extent of their 2/3rd share. This plea by no stretch would mean that any partition had taken place. The objectors claimed their 2/3rd share in the joint land. It is categorical plea of the objectors that the joint land had not yet been partitioned and all the three brothers i.e Appellants and Respondent No. 2 are joint owners in joint possession of the entire joint land including the suit land. Appellants were neither party to the impugned agreement nor were they party to the decree passed in the suit filed by Respondent No. 1 against Respondent No. 2. Consequently, Appellants are not bound by the impugned agreement or by the decree passed on the basis thereof. When Respondent No. 2-JD himself was not in the exclusive possession of the suit land, the question of delivering actual physical possession thereof to Respondent No. 1-DH in execution of the decree would not arise as it would violate the rights of the Appellants, who are co sharers in joint possession of the suit land and other land. Even jamabandi for 1998-99 reveals that all the three brothers i.e Appellants and

Respondent No. 2 are joint owners in joint possession of the suit land and other joint land.

9. *Even according to DH (Respondent No. 1), the JD (Respondent No. 2) agreed to sell 8 kanals land of killa No. 36//18 being 160/2411 share of 120 kanals 11 marlas land, depicting that the said land is still joint land and the DH by purchasing share to the extent of 8 kanals land has become co sharer in the total joint land to that extent.*

10. *For the reasons aforesaid, I find that in execution of decree, Respondent No. 1-DH is not entitled to get actual physical possession of the suit land measuring 8 kanals. Approach of the Courts below in dismissing the objections of the Appellants herein is patently perverse, illegal and unsustainable. On the contrary, Respondent No. 1-DH is entitled to only symbolic possession to the extent of share measuring 8 kanals out of the share of Respondent No. 2-JD in the total joint land. Accordingly, impugned orders of the Courts below are set aside. Objections filed by the Appellants are allowed. Respondent No. 1-DH shall be delivered only symbolic possession as co sharer to the extent of 8 kanals land in the joint land out of the share of Respondent No. 2-JD.”*

The law qua the sale of a specific portion of un-partitioned land is no longer *res integra*. A Full Bench of this Court in the case of “**Bhartu Vs. Ram Sarup**” [1981 PLJ 204] has held that a sale of a specific portion of land described by particular khasra numbers by the co-owner out of the joint khewat would be considered as a sale of share out of the joint land. The said decision has been reiterated in a plethora of judgments.

Keeping in view the settled law, the impugned order dated 21.07.2017 (Annexure P-3) is set aside. The respondent No.1-decree holder would not be entitled to get actual physical possession of the suit land in the present execution application. However, it shall always be open to the respondent No.1-decree holder to apply for partition as well as to pursue his claim for mesne profits in accordance with law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

17.03.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO