

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6740 of 2017 (O&M)

Date of Decision: 16.05.2022

Kuldip Ram (Deceased) through his LR's

... Petitioner(s)

Versus

Balwinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. S.P.Soi and Mr. Sahil Soi, Advocates
for the petitioner(s).

Mr. Manuj Nagrath, Advocate
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. While assailing the concurrent findings of facts, arrived at by the Executing Court, which have been affirmed by the First Appellate Court, the decree holder has filed the present revision petition.

2. The petitioner-Kuldip Ram, along with his brother-Chet Ram, was joint owner of the unpartitioned land. Kuldip Ram claims that Chander Mohan, Tarlok Singh, Paramjit Singh and Gian Chand have encroached upon the aforesaid piece of land, as a consequence, filed a suit for possession, which was decreed on 30.07.1994. In the meantime, Chet Ram sold some part of the undivided property in favour of Chander Mohan and Inder Mohan vide sale deed dated 11.12.1992. Thereafter, Chet Ram has sold some part of the property in favour of Harbhajan Singh vide sale deed dated 14.06.1996. Balwinder Singh and Darshan Singh, sons of Harbhajan

Singh, claiming to be in possession of some part of the property, filed

objections. The Executing Court, after finding that Balwinder Singh and Darshan Singh are in possession of the property sold by Chet Ram, dismissed the execution petition. Harbhajan Singh is stated to have purchased 15 kanals of land. From the joint land measuring 16 kanals, he purchased 6 kanals 5 marlas of land only.

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

4. The learned counsel representing the petitioner contends that there is a decree for possession passed in favour of the plaintiff which has to be given effect to. He submits that the respondents may seek possession by filing a petition for partition of the property. Per contra, the learned counsel representing the respondent No.1 and 2 submits that the respondents-Balwinder Singh and Darshan Singh are co-owners in possession, therefore, the petitioner may seek partition of the property.

5. The judgment and decree dated 30.07.1994 is a judgment in personam. Such decree is binding on Chander Mohan, Tarlok Singh, Paramjit Singh and Gian Chand i.e. the parties primarily involved in the lis. Neither the respondents-Balwinder Singh and Darshan Singh, nor their predecessor-in-interest, namely Harbhajan Singh or Chet Ram were party defendants in the suit. Hence, the decree for possession passed in favour of Kuldip Ram and against Chander Mohan, Tarlok Singh, Paramjit Singh and Gian Chand is not binding, howsoever, on their rights. The property in dispute is a joint unpartitioned property. The respondents-Balwinder Singh and Darshan Singh being co-owners cannot be dispossessed in execution of a decree in which they are not a party.

both the Courts below have wrongly dismissed the execution petition. He submits that the execution should have been permitted to continue against Chander Mohan, Tarlok Singh, Paramjit Singh and Gian Chand, the judgment debtors.

7. The learned counsel representing the respondent No.1 and 2 submits that he has no objection to the continuation of the execution petition except the property in his possession.

8. Keeping in view the aforesaid facts, the present revision petition is partly allowed. The execution petition will stand restored to its original number. However, it is clarified that under the garb of the aforesaid decree for possession dated 30.07.1994, Balwinder Singh and Darshan Singh sons of Harbhajan Singh shall not be dispossessed from the property in their exclusive possession.

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

(Anil Kshetarpal)
Judge

May 16, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No