

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

CR No.7301 of 2018 (O&M)
Date of decision: 13th May, 2022

Jagir Singh (deceased) th. LRs

... Petitioners

Versus

Kulwant Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Harminder Singh, Advocate for the petitioners.
Mr. G.S. Sirphikhi, Advocate for respondent No.1.
None for respondents No.5 and 6.
Service of remaining respondents – dispensed with.

FATEH DEEP SINGH, J.

A civil suit bearing case No.190 date of institution 13.03.1986 titled 'Kulwant Singh & others vs. Jagir Singh (deceased) thr. LRs' was decided by the Court of learned Sub Judge, First Class, Batala through judgment and decree dated 05.10.1991. The learned trial Court decreed with costs the suit which was for specific performance of an agreement to sell dated 23.11.1981 of the property duly described and depicted in the suit as well as to put the plaintiff in full possession of the suit land in performance of this agreement subject to payment of balance sale consideration detailed therein. It is nobody's case nor put to challenge that the said judgment and decree since then was upheld by the first appellate Court on 15.02.1993 and subsequently upheld by this

Court in regular second appeal vide its judgment dated 01.02.1994. The first execution of this judgment and decree was filed on 01.07.1995 and which was disposed off as satisfied vide order dated 11.07.2014. In spite of the sale deed having been executed, the decree-holders were not handed over possession of the land, subject matter of the suit, which lead to repeated filing of execution applications and ultimately third execution application was filed on 15.09.2014 under Order 21 Rule 32 CPC read with Section 151 CPC for issuance of warrants of possession of this very property. The Executing Court during the process of getting the decree executed was faced with certain objections filed by the judgment debtors primarily on the grounds that the execution application was barred by limitation being beyond 12 years and that now warrants of possession cannot be issued as it did not form part of the original judgment and decree.

Mr. Harminder Singh, Advocate for the petitioners has cited **‘Jeet Singh vs. Gursewak Singh & others’ 2015 AIR CC 3432;** **‘Adcon Electronics Pvt. Ltd. vs. Daulat’ 2002(1) RCR (Civil) 806;** **‘Antony sami vs. Arulanandam Pillai (D) by LRs’ 2002(1) RCR (Civil) 826;** and **‘Nathu Ram vs. Chhotu Singh’ 2013(1) RCR (Civil) 517** to drive home the point that no Court can grant the relief of possession if it is not so claimed and therefore, unless the possession of immovable property is also specifically prayed for, the Court cannot grant it. Learned counsel is trying to reiterate the fact that if decree is

silent, the relief of possession cannot be granted and further that under Article 136 of the Limitation Act, the time for filing of the execution ought to be from the date of passing of the decree and therefore by this analogy such execution of the judgment and decree cannot be put into operation.

The same is sought to be opposed by Mr. G.S. Sirphikhi, Advocate representing respondent No.1 who has cited **‘Deep Chand vs. Mohan Lal’ 2000(3) RCR (Civil) 1; ‘G. Subramanyam (died) represented by his LRs G. Sugunamma & others vs. B. Raghunath (died) represented by his LRs B. Revathi & others’ 2017(4) ALT 258; and ‘Manickam @ Thandapani & another vs. Vasantha’ 2022 LiveLaw (SC) 395.**

Appreciating the submissions of the two sides, the pleadings in the suit clearly elucidate that it was a suit for specific performance, not only for performing the agreement dated 23.11.1981 but also with a prayer to put the plaintiff in full possession of the said land in performance of the said agreement to sell, subject to payment of ₹73,437.50 p. Admittedly, the sale deed has already been executed and the possession has still not been delivered. The operative part of the judgment and decree of the trial Court is reproduced below:-

“18. As per my detailed findings on the issues above the suit of the plaintiffs succeeds same stands decreed with costs.”

More so, the Supreme Court in its latest view in **Manickam @ Thandapani's case (ibid)**, has clearly held that provisions of Section 22(2) of the Specific Relief Act 1963 are purely directory in nature and has held that in a decree for specific performance one need not specifically claim possession which is mere ancillary and therefore construing that the expression 'at any stage of proceedings' is wide enough to allow the plaintiff to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. The ratios cited on behalf of the petitioner certainly are not applicable to the case in hand on account of factual disparity.

The Supreme Court in **Deep Chand's case (ibid)**, while interpreting the provisions of Article 136 of the Limitation Act, had considered at length the period of 12 years and interpreted that execution of decree should not be futile on mere technicalities on the grounds that the decree is incapable of being executed under any provision of law and had advised taking a rationale approach holding out that the period of limitation is to give a fair and liberal and not a technical constriction enabling the decree-holder to reap the fruits of the decree.

Since the sale deed dated 10.07.2014 has been executed and therefore a fresh period of limitation starts accruing from that day for the purposes of execution to the effect of getting possession of the property in question and which is precisely the law laid down in '**G. Subramanyam's case (ibid)**' by the Telangana and Andhra Pradesh

High Court in a similar matter holding out that in a suit for specific performance of the contract, decree is from the date of the execution of the sale deed and therefore period of limitation has to be reckoned from the date of execution of the sale deed and not from the date of decree and precisely which is the crucial point involved in the present matter. The learned lower Court has rightly held it so and which impugned order (Annexure P6) needs to be upheld and the Court below has rightly dismissed the objections of the petitioners.

The present petition being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 13, 2022

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No