

CR-1719-2019 (O&M)

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

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CR-1719-2019 (O&M)
Date of decision : 18.04.2022

Yoginder Kumar Sud

...Petitioner

versus

Thakur Rajiv Singh and Another

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate for the petitioner.

Mr. Rajinderpal Singh Rana, Advocate for respondent No.1.

ALKA SARIN, J.

The present civil revision under Article 227 of the Constitution of India has been filed for setting aside the impugned order dated 07.04.2018 (Annexure P-5) passed by the Court of Civil Judge (Senior Division), Jalandhar vide which the objections filed by respondent no.1 have been accepted and the application filed by the petitioner/decreed-holder for providing police help for enforcing the decree dated 24.08.2002 has been dismissed. Also under challenge is the order dated 14.12.2018 (Annexure P-6) whereby the appeal of the petitioner/decreed-holder against the order dated 07.04.2018 has been dismissed as being not maintainable.

Brief facts relevant to the present *lis* are that the petitioner claiming of being owner in possession of Plot Nos.7 and 8 situated in Village Kingra, Friends Cooperative Housing Society (Guru Teg Bahadur Nagar Enclave), Jalandhar on the basis of sale deed dated 02.02.2000, filed a suit for permanent

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injunction for restraining the respondent no.1 herein from interfering in possession of the petitioner over land measuring 2 Kanals 13 Marlas and 12 sq ft i.e Plot Nos.7 and 8 comprised in Khasra No.203 to 209, 447/201, 449/211 situated in the revenue estate of village Boot and Khasra No.1892/2 situated in the revenue estate of village Kingra, Tehsil and Distt Jalandhar as entered in the jamabandi for the year 1995-96 precisely situated in village Kingra Friends Co. Op Housing Building Society Ltd. Jalandhar and bounded as under :

North : Road 30 ft
South : Road 27½ ft
East : Punsup Gas Godown
West : Plot Nos.6 and 9

Vide judgement and decree dated 24.08.2002 the said suit for permanent injunction was decreed restraining respondent no.1 from interfering in the peaceful possession of the petitioner over the suit land except otherwise than in due course of law. Respondent no.1 challenged the judgment and decree dated 24.08.2002 by way of appeal which was dismissed vide judgment and decree dated 17.03.2003. Respondent no.1 filed RSA No.2455 of 2003 in this Court against the judgements and decrees passed by both the Courts decreeing the suit of the petitioner.

Meanwhile, one Balwant Singh Goraya through respondent no.1 herein acting as his attorney, had also filed a suit for specific performance/declaration/mandatory injunction and alternative relief of recovery averring that the defendants therein had executed an agreement dated 10.03.1994 agreeing to sell their land measuring 2 Kanals and 13 Marlas and 12 sq ft. comprising Plot Nos.7 and 8 to the said plaintiff i.e. Balwant Singh Goraya and

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the total sale consideration was Rs.30,00,000/- out of which the defendants therein had received a sum of Rs.10,00,000/- as earnest money and the balance amount was to be paid by 24.09.1994 which was the target date for execution and registration of the sale deed. This suit was contested by the defendants therein and was dismissed on 01.12.2000, inter-alia, on the ground that there was interpolation in the agreement to sell. The appeal by Balwant Singh Goraya through respondent no.1 herein acting as his attorney against the said judgment and decree dated 01.12.2000 was also dismissed by the lower Appellate Court vide judgement and decree dated 02.07.2014. Balwant Singh Goraya through respondent no.1 herein acting as his attorney filed RSA No.4967 of 2014 in this Court against the dismissal of his suit by both the Courts.

This Court vide a common judgment dated 01.11.2017 dismissed both the regular second appeals i.e. RSA No.2455 of 2003 filed by respondent no.1 against the judgements and decrees passed by both the Courts decreeing the suit of the petitioner and RSA No.4967 of 2014 filed by Balwant Singh Goraya through respondent no.1 herein acting as his attorney against the dismissal of his suit by both the Courts.

Against the judgement dated 01.11.2017 passed by this Court, two Special Leave Petitions were preferred before the Supreme Court - SLP No.37334 of 2017 was preferred by respondent no.1 against the judgements and decrees decreeing the suit of the petitioner while SLP No.36944 of 2017 was preferred by Balwant Singh Goraya against the dismissal of his suit by both the Courts. Vide order dated 10.01.2018 the Supreme Court dismissed SLP No.36944 of 2017 while SLP No.37334 of 2017 was dismissed as withdrawn.

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It is pertinent to notice that after the passing of the judgment and decree in the suit for permanent injunction in his favour, the petitioner had filed an application for providing police help for enforcement of the judgment and decree passed in his favour. However, the said application was adjourned *sine die* to await the orders of this Court. After the dismissal of the SLPs referred to above, the application for providing police help was revived. Objections were filed by respondent no.1 stating therein that the petitioner was not in possession of any specific area at the spot and in view of the decree passed in his favour, at best, he could be considered as a co-sharer and his remedy in law would be to seek partition of the land. Vide the impugned order dated 07.04.2018 the Executing Court dismissed the application for providing police help filed by the petitioner and accepted the objection petition filed by respondent no.1. The Executing Court observed that neither Satinder Kaur nor Bhagat Singh, the vendors of the petitioner, were in possession of any specific area covered by Plot Nos.7 and 8 and the petitioner would at best be considered as a co-sharer and the remedy would be to file a suit for partition of the land and further that the land as described in the plaint was not identifiable. Against the said order dated 07.04.2018, an appeal was preferred before the Additional District and Session Judge which came to be dismissed vide order dated 14.12.2018 as not maintainable. Hence, the present revision petition.

I have heard the learned counsel for the parties as well as perused the written submissions submitted by both the learned counsel.

Learned counsel for the petitioner contended that the Executing Court has traversed beyond the decree while dismissing the application for providing police help filed by the petitioner and accepting the objection petition

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filed by respondent no.1. He contended that the suit land was fully identifiable and was not part of any joint khata. It is further the contention that the Executing Court has gone beyond the decree inasmuch, as the petitioner, right upto the Supreme Court, was held to be owner in possession of the suit property and the injunction suit of the petitioner was decreed and now the petitioner is running from pillar to post to enjoy the fruits of the decree. Reliance has been placed upon the decision in *Tarlochan Singh Vs. Rattan Kaur [2015(5) RCR Civil 636]*. Further reliance has been placed on the decision of the Constitution Bench of the Supreme Court in the case of *V. Ramaswami Aiyangar & Ors. Vs. T.N.V. Kailasa Thevar [1951 AIR SC 189]* holding that the Executing Court cannot go beyond the terms of the decree, though it has the power to interpret the decree. However, the Executing Court cannot create a new decree for parties under the guise of interpretation. It was also argued that the Executing Court has passed the impugned order by making out a new case in favour of respondent no.1 which was not even pleaded or proved in the suit whose decree was sought to be got executed.

Lastly, it has been contended that the conduct of the parties also needs to be seen in the present case. In the regular second appeals filed before this Court it was categorically held that the plaintiff in the suit for specific performance (which was filed by respondent no.1 acting as attorney of Balwant Singh Goraya) has not approached the Court with clean hands inasmuch, as the agreement to sell has been interpolated to bring the suit within limitation. It was argued that the plaintiff in that suit was acted for by respondent no.1 being his attorney and since it has been found that he had not approached the Court with clean hands, hence, he did not deserve any relief.

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Per contra, the learned counsel for respondent no.1 has contended that the Executing Court has not delved on the legality of the decree dated 24.08.2002. The main objection to the execution was that respondent no.1 is still a co-sharer in the land purchased by the Society and through it by the petitioner and therefore under the garb of the decree the petitioner cannot affect the rights of respondent no.1 over the suit land of which respondent no.1 is a co-owner. It is further the contention that it is within the jurisdiction of the Executing Court to decide the nature of the land held by the decree holder. It is further the contention that allowing the application for providing police help filed by the petitioner would lead to the petitioner staking claim over the adjoining land and asserting himself to be co-sharer of a major chunk. It has further been contended that the only remedy with the petitioner is to seek partition of the land. The learned counsel has relied upon the order passed by this Court in **CR-8336 of 2018 [Veero Devi vs Balla Ram & Ors. [CR-8336-2018 decided on 14.01.2019]** and decision by the Karnataka High Court in **H.S. Shivaswamy Seetharamaiah Vs. H.S. Raghavendra & Ors. [2013(7) RCR Civil 3158]**. Counsel for respondent no.1 also submitted that the suit land is not identifiable and therefore the decree dated 24.08.2002 is unable to be executed.

The present case has a chequered history and the petitioner, having succeeded in his suit for injunction right up-to the Supreme Court, is struggling to reap the fruits of the decree in his favour. The Executing Court while dismissing the application for providing police help filed by the petitioner and accepting the objection petition filed by respondent no.1 held that *“From entire material available on record, when objector is also co-sharer in same property in respect of same khasra numbers, appropriate remedy with applicant*

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would be to seek partition the property of which he is claimed to be owner in possession. Therefore, application for directing the respondent to obey the decree by providing police help for said purpose is not sustainable. For said purpose objection petition filed by judgment debtor/respondent no.2/objector, therefore, stands allowed. Application for providing police help & main application for directing enforcement of decree against judgment debtor/objector/respondent no.2, both stand dismissed". Thus, the Executing Court has found that the respondent no.1 is a co-sharer in the suit property but also that the petitioner ought to file a suit for partition. The said findings recorded by the Executing Court are perverse and illegal on the face of it.

A perusal of the judgement dated 24.08.2002 passed by the Trial Court while decreeing the suit for permanent injunction filed by the petitioner shows that at no point was a defence raised by respondent no.1 that he is a co-sharer in the suit land. Infact, no such plea having been raised by respondent no.1 is discernable from the said judgement and respondent no.1 only raised pleas on behalf of Balwant Singh Goraya who was not even a party to the suit. The Trial Court while deciding issue no.1 categorically held that the petitioner was in possession of the suit property. This finding was upheld by the lower Appellate Court and this Court. The respondent no.1 withdrew his SLP and did not challenge this finding. That being the position, this Court is unable to accept the findings recorded by the Executing Court that the respondent no.1 is a co-sharer in the suit land. Further, once the suit for permanent injunction of the petitioner stood decreed the Executing Court could not render the said decree nugatory by holding that the petitioner ought to file a suit for partition. The impugned order passed by the Executing Court shows that it (the Executing Court) permitted the

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respondent no.1 to set-up a case beyond that pleaded by him in the suit itself. The Executing Court clearly traversed beyond the decree dated 24.08.2002 which it was called upon to execute and exceeded the jurisdiction vested in it. The Supreme Court (Constitutional Bench) in the case of **V. Ramaswami Aiyangar** (*supra*) has inter-alia held as under :

“8. The learned Judges appear to have overlooked the fact that they were sitting only as an executing court and their duty was to give effect to the terms of the decree that was already passed and beyond which they could not go. It is true that they were to interpret the decree, but under the guise of interpretation they could not make a new decree for the parties.”

The petitioner had filed the suit for permanent injunction against respondent no.1 which stands decreed in his favour and the said decree stands affirmed right upto the Supreme court. The suit for permanent injunction was filed on the basis, of the sale deed dated 02.02.2002 and the petitioner was held to be in possession of the suit land. Even if it was to be assumed and presumed that the land is unpartitioned, which was neither pleaded nor proved in the suit, even then the petitioner would have a right to enjoy the land in his possession to the extent of his share. Even before this Court the case of respondent no.1 is not that the petitioner is wanting to construct anything beyond the area sold to him but he apprehends that the petitioner would stake ownership in the adjoining land. The reliance of the learned counsel for respondent no.1 on the decision in **Veero Devi's** case (*supra*) would be of no avail as the same is totally distinguishable on facts. In the said case the question was of encroachment of

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land. In the present case the petitioner has sought police help only for raising construction on the portion owned by him and possessed by him and not beyond the area of the sale deed in his favour.

The Executing Court has also relied upon certain revenue documents to non-suit the petitioner. However, these revenue documents were not part of any evidence and were merely produced by respondent no.1. Without any issues having been framed and evidence being led, the Executing Court could not accept any document merely produced by any party. The procedure adopted by the Executing Court cannot be accepted in our jurisprudence. The reasoning given by the Executing Court while allowing the objections filed by respondent no.1 is wholly unsustainable in law.

The Executing Court has further held that respondent no.1 is a co-sharer in the suit property and, hence, the only remedy with the petitioner/decreed-holder would be to file for partition. Even if it was to be assumed for the sake of arguments that respondent no.1 is a co-sharer in the suit property, the petitioner having been held to being in possession of Plot Nos.7 and 8 right-up to the Supreme Court, he (the petitioner) would have every right to enjoy his property. It is well settled that a co-owner in exclusive possession of joint property or its portion can raise construction on the portion in his possession as long as it does not amount to ouster of the other co-owners. The construction, if any, would at best be subject to the outcome of the partition. However, in the present case the petitioner cannot be termed to be a co-owner since respondent no.1 neither pleaded nor proved this in the suit and neither did he plead or prove his ownership over any part of the suit land.

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The description of the suit land given in the plaint and in the decree is sufficient for it being able to be identified. The relief clause in the plaint of the suit for permanent injunction filed by the petitioner against respondent no.1 reads as under :

“It is, therefore, prayed that a decree for permanent injunction restraining the defendant from in any manner interfering in possession of the plaintiff over the land measuring 2 kanals 13 marlas 12 square ft of plots No.7 & 8 comprised in Khasra Nos.203 to 209, 447/210, 449/211, situate in the revenue estate of village Boot and Khasra No.1892/2 situate in the revenue estate of village Kingra, Tehsil & District Jalandhar as entered in the jamabandi for the years 1995-96 shown red in the site plan and as full detailed in the head note of the plaint, may kindly be passed in favour of the plaintiff and against the defendant with costs.”

The boundary of the suit land has also been detailed in the plaint as North : Road 30 ft; South : Road 27½ ft; East : Punsup Gas Godown; West : Plot Nos.6 and 9. These details are also mentioned in the decree dated 24.08.2002, which leaves no manner of doubt regarding the description and discernibility of the suit property. The Supreme Court in the case of **Pratibha Singh Vs. Shanti Devi Prasad [(2003) 2 SCC 330]** held inter-alia as under :

“15. Order 7 Rule 3 CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such

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description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of RS Plot No.595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that Sub-plots Nos.595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed the map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to it promptly. The default or carelessness of the parties does not absolve the trial court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed. This is the first error.

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17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3

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CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

Hence, the execution of the decree dated 24.08.2002 cannot be avoided by contending that the suit land is not identifiable. In **Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman [(1970) 1 SCC 670]** the Supreme Court held that “*A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties”.*

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The reliance by the counsel for respondent no.1 on the decision by the Karnataka High Court in the matter of **H.S. Shivaswamy Seetharamaiah** (*supra*) is also misplaced. In that case the decree passed was for restraining the respondents therein or any person claiming under them from removing earth from the channel or causing damage to the road leading to the house of the plaintiff. However, the plaintiff sought permission of the Executing Court to fence 'A' schedule property marked in the sketch enclosed along with the execution petition which was clearly beyond the decree in his favour. Further, the Karnataka High Court also found that *“The petitioner has not produced any materials to show that the respondents are fully aware of the terms of the decree and that they have consciously and deliberately disobeyed the said decree. After considering the materials on record, the court below has opined that no materials have been produced by the decree holder for grant of the relief claimed by him. I do not find any error in the order”*. In the present case the decree dated 24.08.2002 in favour of the petitioner states that *“the suit of the plaintiff is decreed for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff over the suit land as detailed in the head note of the plaint except otherwise than in due course of law”*. The petitioner in his application for providing police help for enforcement of the judgment and decree dated 24.08.2002 averred that the respondent trespassed in the suit land and by force kidnapped the labourers resulting in the registration of a case against him. This alleged act by the respondent is clearly in violation of the decree dated 24.08.2002 and not in due course of law. As such, the Karnataka High Court decision is distinguishable and not applicable to the facts and circumstances of the present case.

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In view of the discussion above, this Court finds that the Executing Court, while passing impugned order dated 07.04.2018 (Annexure P-5), failed to exercise the jurisdiction which vested in it. The impugned order is illegal and suffers from jurisdictional errors. Accordingly, the present revision petition is allowed. The impugned order Annexure P-5 passed by the Executing Court is set aside. Application moved by the petitioner for providing police help for enforcement of the judgment and decree dated 24.08.2002 passed in his favour is allowed and the objections filed by the respondent are dismissed. The Executing Court is directed to provide police help in accordance with law to the petitioner for implementing the decree dated 24.08.2002. Parties are directed to appear before the Executing Court on 04.05.2022. Pending applications, if any, also stand disposed off.

April 18, 2022
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(ALKA SARIN)
JUDGE

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