

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

CR-1267-2022 (O&M)

Date of decision: 13.09.2022

Sanjeev Kumar and another

....Petitioners

Versus

Hari Chand (since deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate for the petitioners

Mr. Kanwar Abhay Singh, Advocate for
respondent no.1 (i), 2 and 8

ANIL KSHETARPAL, J (Oral)

The petitioners herein are the judgment debtors. They assail the correctness of the order dated 18.08.2018 passed by the Executing Court, while refusing to recall the warrants of possession, previously issued by the court.

Some peculiar facts are required to be noticed. Late Sh.Hari Chand, maternal grandfather of the petitioner no.1, filed a suit for possession by way of declaration to the effect that the plaintiff is the owner of property measuring 50 square yards comprised in khasra no.302 located in Tarf Gahlewal, Tehsil and District Ludhiana. Various other reliefs were also sought. Apart from the petitioners, he has also impleaded his own children as the defendants. The suit was ex parte decreed on 20.12.2013. The operative part of the judgment reads as under:-

*“Hence, considering all these facts and
circumstances of the case, the suit of the plaintiff is*

decreed ex-parte to the effect that the plaintiff owner of property measuring 50 Sq.yards mentioned in the head note of the plaint and and further to the effect that the alleged General Power of Attorney bearing Wasika No.227 dated 26.4.2007 registered in the office of Sub Registrar Ludhiana allegedly executed by plaintiff in favour of defendant no.1 and alleged sale deed bearing Wasika No.10385 dated 17.10.2007 allegedly executed by defendant no.1 in favour of defendant no.2 an consequent mutation, if any, on the basis of alleged sale are illegal, null, void and not binding on the rights of the plaintiff and the same is liable to be set aside being result of fraud, fabrication. The defendant no.2 is restrained from alienating, transferring and creating any charge/Loan on suit property except in due course of law. Decree sheet be prepared. File be consigned to the Record Room.”

Late Sh.Hari Chand died during the pendency of the suit and his two sons were brought on record as his legal representatives. After the decree was passed, an execution petition was filed seeking issuance of warrants of possession. In the aforesaid application, it was stated that the total plot is of 100 square yards out of which 50 square yards were owned by Late Sh.Hari Chand whereas the remaining plot is owned by his wife Smt. Sunita. While filing the execution application, it was disclosed that plot no.182 represents the disputed plot. In substance, the possession of plot no.182-A was sought. The trial court issued the warrants of possession. As already noticed, application filed by the petitioners for recall of the warrants of possession has been dismissed. The court has observed that once there is a prayer in the caption of the plaint and the suit has been decreed, as prayed for, then there is a decree for possession.

On a careful reading of the relevant part of the judgment, it is evident that the court did not grant any relief of delivery of possession

against the judgment debtors. The operative part of the judgment is categoric that the ex parte decree is to the effect that the plaintiff is owner of the property measuring 50 square yards. The court has wrongly observed that there is a decree for possession.

Moreover, as per Explanation V of Section 11 of the Code of Civil Procedure, 1908, any relief claimed in the plaint, which is not expressly granted, for the purpose of this Section, shall be deemed to have been refused.

There are certain other reasons for the interference of this Court. After the death of Late Sh.Hari Chand, the petitioners are some of the natural heirs, as the mother of petitioner no.1 has already died. There are other class I legal heirs of Late Sh.Hari Chand, who are also the defendants in the suit and therefore, they are also the judgment debtors. There is no clarity about their respective shares in the property. Moreover, the total plot as asserted in the execution petition is 100 square yards, which was jointly purchased by Late Sh.Hari Chand alongwith his wife. There is no division of the property.

Keeping in view the aforesaid facts, the orders passed by the trial court on 18.08.2018 and 21.03.2022 are set aside. The respondents shall be at liberty to avail their remedy in accordance with the law.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

13.09.2022

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE