

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

CR-3238-2022 (O&M)

Date of decision : 17.08.2022

Karam Kaur and another

...Petitioners

Vs.

Sakattar Raj and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Harinder Sharma, Advocate for the petitioners.

MANOJ BAJAJ, J.

Petitioners (judgment debtors) are aggrieved against the orders dated 31.05.2022, 06.07.2022 and 27.07.2022 (Annexures P-1 to P-3) passed by the executing Court in execution application No.65/2016, whereby firstly warrants of possession were issued against them for delivery of possession to the decree-holders, and through subsequent orders, police help was also provided for execution of warrants of possession.

Briefly, the facts leading to the revision petition are that Charu Ram son of Sh.Mathara along with his two brothers was joint owner in possession of land measuring 15 kanals 13 marlas to the extent of 1/3rd share, out of total land measuring 46 kanals 19 marlas comprised in khata No.26/29, khasra No.15R/21/2(5-4), 22/1(2-3), 20R/16/2(3-8), 17/2(1-4), 24/2(1-6), 25(7-1), 22R/20/2(3-4), 21/1/2(0-11), 23R/4/2(6-16), 5(7-12), 51R/20(0-2), 157R/1(0-5), 158R(3-10) situated in village Ajmer, H.B.No.384, Tehsil Mukerian, District Hoshiarpur. Charu Ram died on 10.08.2021 leaving behind five daughters including the petitioners and after his death, the land owned by Charu Ram devolved upon his daughters in equal shares by way of natural succession, and in this regard mutation No.1940 was also sanctioned.

Thereafter, the successors-in-interest came into actual physical possession of the land as co-sharers, which is un-partitioned. The respondent No.1 (Sakattar Raj son of Sh.Karam Singh) filed a suit bearing No.1644 of 2005/2010 for declaration that on the basis of registered Will dated 30.08.1983, the land owned by Charu Ram would vest with him, who also prayed that the mutation No.1940 be also declared as wrong, illegal and void. As a consequential relief, he prayed for a decree for permanent injunction restraining the defendants from denying the title of plaintiff, and in alternative, he sought a decree for possession.

The suit was contested by daughters of Charu Ram including Resham Kaur (mother of plaintiff) and the same was decreed vide judgment dated 11.01.2012.

Aggrieved against the said judgment and decree dated 11.01.2012, the defendants preferred appeal, and the same was also dismissed, whereby the decree dated 11.01.2012 stood upheld and later it attained finality as Special Leave Petition filed by petitioners was also dismissed.

Thereafter, decree holder filed execution application for execution of the decree and the executing Court vide impugned order dated 31.05.2022 issued warrants of possession against the judgment debtors and subsequently allowed police help to facilitate the delivery of possession of the suit property to the decree holders. Hence this revision petition.

Learned counsel for the petitioner has argued that through the suit brought by decree holder, he claimed joint possession of the suit property on the strength of the Will, therefore, the execution petition would be governed by Order XXI Rule 35 (2) CPC and the decree holder can only seek symbolic

possession, and in order to seek actual physical possession of the property, he is required to file a suit for partition. Learned counsel submits that this issue has already been decided by this Court in “Kumari Sandeep and another Vs. Mohinder Singh and another”, 2009 (4) R.C.R. (Civil) 513, “Ram Kumar and another Vs. Bhale Ram and others”, 1990 (2) R.R.R.133 and “Kashmir Singh Vs. Tana and others”, 2000 (4) R.C.R. (Civil) 6, therefore, the order issuing the warrants of possession deserves to be set aside. Mr. Sharma, learned counsel has further argued that during the pendency of the litigation, some of the parties had died and the execution remained pending for a long time for effecting service upon the concerned legal representatives, but the Executing Court, all of a sudden proceeded to issue warrants of possession without affording any opportunity to the petitioners to file objections to the execution petition. According to him, a serious prejudice has been caused to the judgment debtors, therefore, on this ground also impugned orders are not sustainable.

Lastly, it is argued by him that the suit filed by Sakattar Raj was decided vide judgment dated 11.01.2012 (Annexure P-4), but the decree was passed a day before i.e.10.01.2012, therefore, the execution proceedings are not maintainable. Learned counsel prays that the impugned order be set aside and the judgment debtors be allowed to contest the same by filing their objections.

After hearing learned counsel and considering the material on record, this Court deems it appropriate to firstly deal with the argument of Mr. Sharma, learned counsel relating to the validity of the decree as the same was passed a day before the subject judgment.

A perusal of the decree shows that no doubt it contains the date as

10.01.2012, but this appears to be an inadvertent typographical mistake and the same was not questioned by the judgment debtors at any stage while challenging the same upto the Hon'ble Supreme Court. Mr. Sharma, learned counsel has fairly stated that the issue of validity of the decree is being raised before this Court for the first time. Apart from it, the decree under execution neither suffers from any material disability relating to error of jurisdiction, nor is void, much less a nullity, therefore, this Court does not find any merit in this argument and the same is rejected.

The nature of decree relates to the immovable property and Order XXI Rule 35 Code of Civil Procedure, 1908 contemplates the procedure for its execution. The Order XXI Rule 35 Code of Civil Procedure, 1908 read as under:-

“35. Decree for immovable property.-*(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property. ..*

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.”

Learned counsel has placed much reliance upon the sub Rule (2) of Order 21 Rule 35 CPC to contend that the decree holder cannot seek actual

possession of suit property as his prayer in the suit was for joint possession of the land owned by Charu Ram. At this stage, it would be appropriate to extract the decree passed by the trial Court:-

“It is ordered that suit of plaintiff is decreed with no order as to costs, to the effect that the plaintiff is owner of land measuring 15K-13 M being 1/3 share out of total measuring 46K-19M comprised in khata No.26/29 khasra No.15R/21/2(5-4), 22/1(2-3), 20R/16/2 (3-8), 17/2(1-4), 24/2(1-6), 25(7-1), 22R/20/2(3-4), 21/1/2(0-11), 23R/4/2(6-16), 5(7-12), 51R/20(0-2), 157R/1(0-5), 158R(3-10) situated in village Ajmar, H.B.No.384, Tehsil Mukerain, District Hoshiarpur, on the basis of registered Will dated 30.08.1983 Ex.P1. Further, it is held that mutation no.1940 is wrong, illegal and liable to be set aside and the defendants are restrained from alienating suit property to any body. Further, plaintiff being declared as owner on the basis of Will dated 30.8.1983 Ex.P1 is held entitled to possession of the suit land also.”

A reading of the above shows that the trial Court while decreeing the suit for declaration has also passed the decree for possession in favour of the decree holder, and it has also set aside the mutation in favour of the judgment debtors. Thus, it leaves no room for any doubt that the decree relating to suit property is clear, specific and by virtue of it, the whole 1/3rd share of Charu Ram vested with the decree holder. At the same time, the right, title and interest of judgment debtors in relation to the suit land also stood completely severed, therefore, the objection that the decree holder can claim actual physical possession of the suit property only by way of partition is not available to them.

Further, a careful reading of the judgment dated 11.01.2012 shows that the plaintiff-Sakattar Raj had not initially prayed for any decree for possession of the suit property, and it was introduced as an alternative relief through an application under Order VI Rule 17 CPC. Thus, considering the

case of the decree holder as well as the nature of the decree, the execution would be governed by Sub Rule (1) of Rule 35 CPC and not under Sub Rule (2) as claimed by the judgment debtors. The citation in *Kashmir Singh's case* (supra) is not applicable in the present case as in the said case, the decree was for joint possession, so the case was covered under Order 21 Rule 35 (2) CPC.

Similarly, the argument that the judgment debtors (petitioners) were not granted sufficient time to contest the execution is also without any merit, as admittedly the execution was filed in the year 2016, wherein the petitioners were effectively served. During the course of hearing, it is fairly stated by Mr. Sharma, learned counsel that initially both the judgment debtors were proceeded against *ex parte* by the executing Court, who were later allowed to join the execution proceedings on 25.08.2017, but he is unable to explain as to why for these long five years, no objections were filed by the judgment debtors. Thus, it cannot be said that the impugned order issuing warrants of possession is passed hastily without affording any opportunity of filing objections, as it is apparent that the judgment debtors themselves have chosen not to file any objections.

Consequently, this Court does not find any illegality or impropriety in the impugned orders passed by the Executing Court, therefore, no interference is warranted.

Dismissed.

(MANOJ BAJAJ)
JUDGE

17.08.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No