

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

213

CR-2446-2021

Date of Order: 08.02.2022

PREM CHAND

..Petitioner

Versus

SHIV RAM

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Santosh Kumar Sharma, Advocate
for the petitioner.

Mr. D.S. Adlakha, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The petitioner is a decree holder. He assails the correctness of order dated 17.08.2021, passed by the Civil Judge, Senior Division, Yamuna Nagar, Jagadhri, in the execution petition. The Court has allowed the objections and issued warrants of possession only with respect to the land measuring 6 Bighas and 10 Biswas.

Some facts are required to be noticed.

The judgment debtor Sh. Shiv Ram (respondent herein), is the plaintiff in a suit for grant of decree of permanent injunction restraining Sh. Prem Chand (decree holder), his associates and agents from interfering in actual possession of the plaintiff, the running of the plaintiff's business (Kamal nursery) set up in the area of 6 Bighas and 10 Biswas comprised in Khewat No.30 Khatauni No.44, Khasra Nos.625(0-11), Khewat No.84, Khatauni No.184, Khasra No.627(3-17) and Khewat No.243, Khatauni No.409, Khasra No.626(2-2), situated in Basant Nagar, Near ESI Hospital,

Tehsil Jagadari, District Yamuna Nagar, Haryana. The defendant (decree holder-petitioner herein) filed a counter claim in the suit. In para 4 of the counter claim, it was stated as under:-

“That thereafter, the defendant alone is holding the entire Bagh land measuring 31 Bigha 08 Biswa land which is in the self cultivation of the defendant. This property has a garden of Mango trees and the land underneath the tree is being used for preparing the nursery plants in the name and style of “Kamboj Nursery”. The record of nursery is Annexed as Annexure F.”

Sh. Prem Chand has, repeatedly, described the property as measuring 31 Bighas and 8 Biswas in the counter claim. Further, a prayer was made to issue a decree of mandatory injunction directing the plaintiff to vacate the site immediately and put Sh. Prem Chand in the actual physical possession thereof. It may be noted here that in order to identify the property, a layout plan is also stated to have been produced.

The suit was dismissed, whereas, the counter claim filed by Sh. Prem Chand was decreed vide judgment dated 22.03.2011. While framing the decree, it was specifically observed as under:-

“Therefore, a decree of mandatory injunction directing the plaintiff to vacate the suit property is passed in favour of defendant against plaintiff. Plaintiff is directed to hand over the actual and physical possession of the suit property to the defendant within one month from the date of order.”

The first appeal was dismissed, whereas, the Regular Second Appeal was withdrawn.

The petitioner filed execution petition with respect the land measuring 31 Bighas and 8 Biswas.

The learned trial Court has interpreted that the decree has been passed only with respect to 6 Bighas and 10 Biswas which was, originally,

the suit land.

It is well settled that a counter claim is a separate suit for all practical purposes. Thus, the question is whether the counter claim is with respect to the land measuring 31 Bighas 8 Biswas or not? The trial Court has erred in taking a narrow interpretation of the suit property. For the purposes of counter claim, the suit property is to be examined in the context of pleadings of the counter claim. The expression 'suit property' cannot be restricted to the property described in the plaint. Once the counter claim is regarded as an independent suit, the suit property with respect to the execution of decree given in a counter claim is to draw its meaning akin to what has been described in the counter claim itself.

Keeping in view the aforesaid facts, the impugned order is set aside. The Executing Court is requested to pass a fresh order after examining the entire record. The parties through their counsel are directed to appear before the Executing Court on 23.02.2022.

It is expected that the Executing Court will pass a fresh order, independently, after examining the record and without being influenced by the observations made herein.

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

February 08, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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