

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 5890 of 2022 (O&M)

Date of decision : 22.12.2022

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Sandeep Kumar

.....Petitioner

vs.

Jetha Ram and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.S. Godara, Advocate for the petitioner.

Mr. B.S. Mittal, Advocate for respondents No. 1, 4 and 5.

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that, plaintiffs Jetha Ram, Ranjeet, Bhadar – sons, Teeja Devi and Rukma – daughters, of Puran Ram, had filed a suit against defendant Sandeep Kumar, seeking possession of plot measuring 8 Malra, situated at village Bhuratwala, Tehsil Ellenabad, District Sirsa, on the averments that defendant had been in un-authorized possession of the plot and had raised construction thereon. In that suit the plaintiffs had claimed that the plot in question belonged to their deceased father Puran Ram and after his death it has been inherited by them. The un-authorised possession of the defendant was revealed as a result of demarcation carried out by revenue authorities on 15.7.2016. The plaintiffs crave

that a direction be issued to the defendant to remove the construction and then possession of the vacant plot be got delivered to them. Various other ancillary reliefs were also sought.

2. On getting notice, the defendant appeared and filed written statement contesting the suit contending that his father had purchased the suit property from one Krishan, for a sum of Rs.1,27,000/- about 20 years ago and since then they have been in possession of the plot, having raised construction thereon, with which the plaintiffs have no concern. The defendant prayed for dismissal of the suit. Issues on merits were framed. Parties were afforded adequate opportunities to lead their evidence. After hearing the arguments, the trial Court of Civil Judge (Junior Division), Ellenabad, gave issue wise findings, observing that the defendant had encroached upon the plot of plaintiffs, in that way, his possession is illegal and the plaintiffs have got a right to get possession of the same, being lawful owners. Therefore, suit of the plaintiffs was decreed vide judgment dated 20.3.2019.

3. No appeal was preferred against the judgment and decree passed by the trial Court. Therefore, the same has become final and binding between the parties. The plaintiffs -decree holders had filed an execution application, for getting possession of the plot in question, wherein the judgment debtor – defendant, put in appearance and filed an application for withdrawing the warrants of possession qua share of decree holders – Ranjeet and Bhadar, stating that they had compromised the matter with the judgment debtor. Such decree

holders had appeared before the Executing Court on 21.11.2022 and made a joint statement that since they had compromised the matter with judgment debtor, they wanted to withdraw the execution of their shares in the suit property measuring 8 Marla, which is still joint. However, the Executing Court, vide order dated 24.11.2022, declined that request observing that if the judgment debtor has compromised the matter with the decree holders No. 2 and 3, then he has remedy to get partition of the suit land done and the application had been filed just to delay the execution of warrants of possession. The application was not maintainable and the Executing Court cannot go beyond the decree. It is required to execute the decree. This order left the judgment debtor – defendant aggrieved and he has filed the present revision petition, challenging that order.

4. The judgment debtors Nos. 1, 4, and 5 have also put in appearance in the Court.

5. Learned counsel for the revision petitioner has contended that the warrants of possession issued by the Executing Court be not executed in view of the fact that two of the decree holders, namely, Ranjeet and Bhadar, have compromised the matter with the revision petitioner – judgment debtor, whereas this request is being opposed vehemently by counsel representing respondents No. 1, 4 and 5, stating that the judgment debtor wants to delay the matter by adopting such like tactics and no reason is there to withdraw the warrants of possession or stay their execution.

6. After hearing the rival contentions, I find that since no

appeal was preferred by the defendant against the judgment and decree passed by the trial Court, he is bound by the same. He had been asked to vacate the plot in suit and to hand over the possession of the same to the plaintiffs, by removing his un-authorized and illegal construction. He has also been restrained from raising further construction over the suit land and from transferring the suit land in favour of anybody else. Merely because two of the decree holders are said to have entered into a compromise with judgment debtor – defendant, the execution of the decree cannot be stalled. Even otherwise, no document with regard to transfer of title in favour of judgment debtor by decree holders Ranjeet and Bhadar comes out to be there except copy of the affidavit executed by them.

7. Therefore, it would be failure of justice, if defendant, who has been found to be in wrong possession of the plot belonging to the plaintiffs, is able to retain that possession for such like reason. As regards, the loss, which may be suffered by him on account of demolition of the construction raised by the defendant, no sympathy can be shown to him in that regard because he should have been aware of all these facts, while grabbing / encroaching upon the land of the plaintiffs and any sympathy shown to him would be counter productive, encouraging the people to come in wrong possession of properties of others and then get necessary benefit, praying for leniency on the pretext of considerable financial loss being caused to them, if they are made to end their wrongful possession.

8. There is no merit in the revision petition. The same stands dismissed accordingly.

22.12.2022 chugh		(H.S. Madaan)
		Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No