

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2880 of 2017

Date of Decision: 28.07.2023

Banwari (Since Deceased) through his Legal Representatives
... Petitioner(s)

Versus

State of Haryana and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Munfaid Khan, Advocate
for the petitioner(s).

Ms. Vibha Tewari, Assistant Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

1. The petitioners have invoked the superintending jurisdiction of the Court under Article 227 of the Constitution of India with a prayer to set aside the order dated 19.01.2017, passed by the Executing Court while dismissing their execution petition.

2. The relevant facts, in brief, are required to be noticed to comprehend the issue which requires adjudication. The State of Haryana is stated to have occupied the land measuring 7 kanals and 2 marlas which belongs to the family of the petitioner (Sh.Banwari, since deceased). The petitioner's son Raghbir Singh filed a suit for grant of decree of possession and *mesne profits* for the use and occupation of the land against the State of Haryana. It was claimed in the suit that Raghbir Singh is owner to the extent of half share in the suit land measuring 7 kanals and 2 marlas. The suit was

dismissed on 10.08.2009, however, in the first appeal, the judgment and

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decree passed by the trial Court was set aside while directing the defendants to handover the vacant possession of the suit property within a period of two months failing which they would pay a sum of ₹10,000/- per month to the plaintiff as *mesne profits*. The operative part of the judgment passed by the First Appellate Court reads as under:-

“23. As a result of above discussion, I am of the view that this appeal is accepted with costs, judgement and decree under appeal are set-aside and suit filed by plaintiff is here by decreed. Defendants are directed to hand over vacant possession of the suit property with in 2 months from today, failing which they will pay a sum of 10,000/- per month to the plaintiff as mesne profits from the date of filing of suit. Decree sheet be prepared accordingly. Lower Court file alongwith one copy of this judgement be sent back. Appeal file be consigned to the record room after due compliance.”

3. The State of Haryana and its officials filed the Regular Second Appeal No. 2790 of 2011 in order to challenge the judgment and decree passed by the First Appellate Court.

4. During the pendency of the appeal, the petitioner filed an application (CM-474-C-2012) with a prayer to implead him as a party-respondent No.2. The petitioner claimed to be the co-sharer in the suit land to the extent of 1/4th share along with his son Raghbir Singh. The aforesaid application was allowed with the following order:-

“C.M. No. 473-C of 2012

Applicant seeks to place on record copy of jamabandi for

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the year 2008-2009 (Annexure A-1) and also seeks exemption from filing certified copy thereof.

The application is supported by an affidavit.

After hearing learned counsel for the applicant, the instant application is allowed for the reasons stated therein.

C.M. stands disposed of.

C.M. No. 474-C of 2012

Applicant, through the application under Order 1 Rule 10 read with Section 151 CPC seeks impleadment as party-respondent No.2 claiming himself to be co-sharer in the suit land of 1/4" share along with the plaintiff-respondent.

Notice of this application was issued vide order dated 13.01.2012 and reply thereto was filed by the appellant-State on 16.4.2012.

After hearing both the parties, the instant application is allowed for the reasons stated therein. However, subject to all just exceptions. Applicant is ordered to be impleaded as respondent NO.2 in the appeal. Office is directed to carry out the necessary correction in the memo of parties.

C.M. stands disposed of."

On the same day, the regular second appeal was dismissed with the costs of ₹50,000/- along with the interest @ 12% per annum. The High Court noticed that the government has acquired/occupied the land of the innocent citizens and it is not appropriate for the State to take the plea of adverse possession

over the land of the citizens.

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5. In order to execute the decree, the execution petition was filed. The State has paid the share of Raghbir Singh (son of the petitioner), however, the Executing Court has dismissed the execution petition filed by late Sh.Banwari. It has been held that late Sh.Banwari was impleaded as a respondent No.2 in the appeal which implies that he was only permitted to contest the appeal. The Court held that no application for amendment of the plaint has been filed. Hence, no decree exists in favour of late Sh. Banwari.

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

7. It is not in dispute that late Sh. Banwari was a co-owner with his son, namely Sh.Raghbir Singh. He became party (respondent No.2) in the regular second appeal whereas Sh.Raghbir Singh was respondent No.1. Once the application was allowed, he would be deemed to have become co-plaintiff with his son. Failure to formally amend the plaint shall not result in defeating the interest of justice. In the facts of the case, the petitioner (late Sh.Banwari) became party to the regular second appeal in order to get the same relief which had already been awarded to his son who is a co-owner in the same parcel of land. The Executing Court has also erred while concluding that there is no decree in favour of late Sh.Banwari. Before the First Appellate Court, late Sh. Banwari was not a party, however, he became a party to the matter in the regular second appeal. He is a party to the decree passed by the High Court. Amendment of a decree passed by the First Appellate Court is only a formality.

8. Moreover, in the peculiar facts which have already been noticed, this Court is of the opinion that the State of Haryana should not be

permitted to take a technical objection which shall result in defeating the interest of justice.

9. Keeping in view the aforesaid facts and discussion, the present revision petition is allowed and the impugned order is set aside. The Executing Court is directed to assess the share of the petitioner in order to ensure recovery of his property.

(Anil Kshetarpal)
Judge

July 27, 2023
“DK”

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