

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

CR 503/2023 (O&M)

Date of decision: 25.01.2023

Dharma (since deceased) through his LRs

.....Petitioners

Vs.

Mehar Chand (now deceased) through his LRs

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. M.S.Dalal, Advocate for the petitioners

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside the orders dated 6.1.2023 and 19.01.2023 (Annexures P-1 and P-2 respectively) passed by Ld. Chief Judicial Magistrate, Kaithal, whereby warrants of possession qua the decretal property have been issued against the petitioner(s)/ LRs of JD in execution proceedings, while the petitioners' applications under Order 9 Rule 13 CPC (Annexure P-7), and another application dated 21.11.2022 (Annexure P-8) praying that execution be adjourned sine die, are still pending.

Brief facts of the case are that the predecessor-in-interest of the respondents namely Mehar Chand had filed a civil suit on 12.06.2012 against the predecessor-in-interest of the petitioners/defendant namely Dharma, praying therein for a decree of possession with regard to the suit land. It was the pleaded case of the plaintiff in the said suit that he was owner of the suit property and the petitioner/defendant had encroached upon the same. It is the case of the petitioners that their predecessor-in-interest/defendant was never served in the

said suit and therefore, at the first instance the defendant was wrongly proceeded against ex-parte vide order dated 8.10.2012 (Annexure P-3). In the meantime, predecessor-in interest of the petitioners died on 9.10.2014 (Annexure P-4), and the said suit was decreed vide ex-parte judgment and decree dated 21.4.2016 (Annexure P-5).

Thereafter, execution proceedings were initiated by the respondents, in which warrants of possession have been issued against the petitioners. Hence, present revision petition.

It is submitted by the learned counsel for the petitioners that in the intervening time, the petitioners and their predecessor-in-interest, have built a house on the suit land in dispute which is the sole residential house of the petitioners. It is submitted that the petitioners are in possession of the suit land since time immemorial and great loss and injury would be caused to them in case the decree is executed. It is accordingly submitted that, the impugned orders be set aside, and the petitioners' applications be allowed. It is further submitted that the servicing agency is colluding with the respondents at the back of the petitioners.

No other argument has been advanced by the learned counsel for the petitioners.

Heard Ld. Counsel for the petitioners.

A perusal of the record of the case shows that in the order dated 8.10.2012 whereby the petitioner was proceeded against Ex-parte, it has been recorded as follows:

“Summons issued against defendant received served on Vikram Singh son of defendant which is a valid service. Case called several times since morning but none

has appeared on behalf of defendant. Let the case file be put up after lunch break.”

However, as no one put in appearance on behalf of the petitioner even after lunch, accordingly, the petitioner was proceeded against Ex-parte.

Thereafter, even in the present execution proceedings, it has been recorded in the zimni order dated 21.8.2018 (Annexure P-6) that the Notice issued to the petitioners/ LRs of JD (i to iii) received back with the report of refusal and affixation. Accordingly, warrants of possession were issued against the petitioner for 2.11.2018.

It is only thereafter that the petitioners moved the present application dated 18.11.2022 under Order 9 Rule 13 CPC (Annexure P-7), for setting aside ex parte judgment and decree dated 21.4.2016; and second application dated 21.11.2022 (Annexure P-8) praying that execution be adjourned sine die, before the Id. Executing Court. It is the grievance of the petitioners that warrants of possession have been issued against the petitioner vide impugned orders dated 6.1.2023 and 19.1.2023 while the above said applications are still pending before the Ld. Executing Court.

In my view, a perusal of the above facts reveals that the petitioners have time and again sought to outreach the process of law. It does not stand to reason that the Process Servers would be in collusion with the respondent in 2012 at time of service in the Civil Suit, as well as in 2018 at time of service in the Execution Petition. Thus, the allegations of the petitioner that the servicing agency is in collusion with the respondent is unfounded and baseless, and farfetched. On the contrary, in my view, a perusal of the above facts reveals that the petitioners have adopted a casual approach.

Even further, the present application under Order 9 Rule 13 CPC has been filed after a gap of almost 6 years, as the ex-parte judgment and decree is of the year 2016. No satisfactory explanation has been put forth by the learned counsel for the petitioners, or even in the pleadings, explaining the cause for this delay, except the bald allegation that the petitioners were not served due to the collusion between the respondent and the servicing agency.

Moreover, in the ex-parte judgment and decree dated 21.4.2016 Annexure P-5, in para 6, it has been recorded that:

6. “PW3 Jaipal Singh, Patwari, Halqa Kharak Pandwa brought the summoned record pertaining the jamabandi of the year 2005-06 Ex.P3. He deposed that as per jamabandi Ex.P3, the owner of the land bearing Khasra no.391/1(1-1), Khewat no.295/276, Khatoni no.442 is Mehar Chand son of Puran and till date except Mehar Chand son of Puran there is no other owner of the above said land”.

Thus, in the judgment and decree under execution there is a categoric finding that as per the evidence and record of PW3 Halqa Patwari, the predecessor-in-interest of the respondents is shown as owner of the suit land.

Accordingly, I find no merit in the present revision petition, and the same is hereby dismissed. However, nothing stated hereinabove shall be construed as an expression or opinion on the merits of the case.

Pending Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

25.01.2023
Joshi

Whether speaking/reasoned
Whether reportable

Yes
Yes/No