

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

CR-635-2018

Date of Decision : 04.08.2023

Paramjit Singh

..... Petitioner

Versus

Tejinder Singh (since deceased) through LR's and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Rahul Vijay Singh Chugh, Advocate
for the petitioner.

Mr. S.C.Jindal, Advocate
for respondents No.1(i) to 1(viii).

VIKRAM AGGARWAL, J

1. The present revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 10.01.2018 (Annexure P-6), passed by the Additional Civil Judge (Senior Division), Mansa vide which the objections (Annexure P-4), filed by the petitioner in the execution petition, filed by the respondent, were dismissed.

2. The facts, briefly put, are that one Mahinder Singh had three sons namely Hardeep Singh, Paramjit Singh and Sardul Singh and one daughter namely Kailash Kaur. The wife of Mahinder Singh namely Rajinder Kaur was the owner of a house situated in Ward No.16, Mansa. Her husband Mahinder Singh predeceased her. Thereafter, a dispute arose between the sons and daughter of Mahinder Singh on one side and the sons and daughters of Hardeep Singh son of

Mahinder Singh on the other side with regard to the house of Rajinder Kaur as also some FDRs and other deposits. Accordingly, a suit was filed by respondent No.1-plaintiff Tejinder Singh son of Hardeep Singh through his legal representatives (hereinafter referred to as 'respondent No.1-plaintiff') against the present petitioner-defendant No.1 Paramjit Singh (hereinafter referred to as 'the petitioner-defendant No.1) and the other sons and daughter of Mahinder Singh as also against brother and sisters of respondent No.1-plaintiff Tejinder Singh. The suit sought declaration and permanent injunction with regard to the house in dispute and the deposits etc.

3. This suit came to be dismissed by the Court of Civil Judge (Senior Division), Mansa on 06.04.2009.

4. An appeal was preferred by respondent No.1-plaintiff which was allowed vide judgment dated 28.05.2010 (Annexure P-1), passed by the Addl. District Judge, Mansa. It was held that respondent No.1-plaintiff alongwith his brother and sisters was entitled for 1/4th share in the disputed house and other movable and immovable property of Rajinder Kaur and the other sons and daughter of Mahinder Singh would also be entitled to 1/4th share each in the said property on the basis of natural succession.

5. A regular second appeal was preferred by the present petitioner-defendant No.1 which was dismissed by a Coordinate Bench of this Court vide order dated 17.03.2016 (Annexure P-2).

6. An SLP is stated to have been filed against the said order dated 17.03.2016 which was also dismissed, as has been stated during the course of arguments.

7. An execution petition (Annexure P-3) was filed by respondent No.1-plaintiff through his Legal Representatives against petitioner-defendant No.1 and

other son and daughter of Mahinder Singh. Objections (Annexure P-4) to the

execution petition were filed by the petitioner-defendant No.1 and the other son and daughter of Mahinder Singh which have been dismissed by way of the impugned order dated 10.01.2018 (Annexure P-6).

8. I have heard learned counsel for the parties and have perused the paper book.

9. Learned counsel for the petitioner-defendant No.1 submitted that the Executing Court erred in dismissing the objections. It was contended that the judgment and decree in favour of respondent No.1-plaintiff was only a decree of declaration and at best it was a decree of joint possession and, therefore, warrants of possession could not have been issued and only symbolic possession could have been delivered as per the provisions of Order 21 Rule 35 (2) CPC. In support of his contentions, learned counsel relied upon the judgment of a Coordinate Bench of this Court in *Ram Kumar & Anr. Vs Bhale Ram & Ors. 1990 Civil Court Cases 541.*

10. On the other hand, learned counsel representing the respondent-defendant contended that there is no illegality in the impugned order as the Executing Court could not have gone beyond the decree. Learned counsel contended that the objections filed by the present petitioner-defendant No.1 were devoid of merit and were, therefore, rightly dismissed by the Executing Court.

11. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

12. Before advertng to the merits of the case, it would be essential to examine the statutory provisions. Order 21 Rule 35 CPC deals with execution of a decree for immovable property and lays down as under:-

“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 the beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on 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.”

13. A perusal of the aforesaid provision shows that where a decree for possession of an immovable property has been passed, the possession thereof is to be delivered to the party to whom it has been adjudged. However, where the decree is for joint possession of immovable property, only symbolic possession is to be delivered. These provisions came to be interpreted by this Court in a number of judgments. A Division Bench of this Court was examining the scope of Order 21 Rule 35 (2) CPC in the case of **Ram Chand and another versus Mallu and others 1977 PLJ 352**. In this case, the plaintiffs had filed a suit for possession of a vacant piece of land. Though their claim regarding adverse possession was not accepted, it was held that they had been dispossessed unauthorizedly by the defendant and, therefore, a decree for joint possession was passed. In the first appeal, the judgment and decree was reversed and the suit was dismissed. The regular second appeal was allowed and the decree passed by the trial Court was restored. The matter went into execution. While deciding this case, a Division

Bench of this Court held that where there was a decree of joint possession, the

same would be executed by affixation of a copy of the warrant at some conspicuous place on the property and also by proclamation by beat of drum as has been laid down in Order 21 Rule 35 (2) CPC. It was held that if the decree holders wanted to have actual physical possession of the suit land, they would have to prefer a separate suit for possession by way of partition in which the decree holders would be entitled to make out their respective case. Similar views were taken by Coordinate Benches of this Court in the cases of **Ram Singh versus Gurnam Singh and others 1989 PLJ 446 and Kashmir Singh versus Tana and others 2000 (4) R.C.R. (Civil) 6** as also in **Ram Kumar & Anr. Vs Bhale Ram & Ors. 's case** (supra).

14. Reverting to the facts of the present case, a decree for declaration was passed in favour of respondent No.1-plaintiff. All parties were held to be entitled to 1/4th share each. It was, therefore, a decree for declaration and at best a decree for joint possession. In terms of the provisions of Order 21 Rule 35 (1 & 2) CPC and in view of the law laid down by this Court, as discussed in the preceding paragraphs, the only remedy for seeking physical possession would be to file a suit for possession/partition as per the facts of the case and not to file an execution petition for the same. However, as per the provisions of Order 21 Rule 35 (2) CPC, in the present case, only symbolic possession could have been delivered. The Executing Court, therefore, erred in dismissing the objections, filed by the petitioner-defendant No.1.

In view of the aforementioned facts and circumstances, the present revision petition is allowed. The order dated 10.01.2018, passed by the Addl. Civil Judge (Senior Division), Mansa is set aside and the objections filed by the petitioner-defendant No.1 are allowed. Consequently, the execution petition is

dismissed. Parties may, however, avail the other remedies available to them in law.

(VIKRAM AGGARWAL)
JUDGE

04.08.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No