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

C.R No. 6721 of 2006 (O&M)

DATE OF DECISION : 01.05.2023

Dhan Raj

...Petitioner

Versus

Kishan Dutt and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kul Bhushan Sharma, Advocate,
For the appellant.

Mr. Anil K. Ahluwalia, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 13.11.2006 passed by learned Civil Judge (Senior Division), Rewari, vide which objections filed by defendant/revisionist herein, in execution proceedings were dismissed.

2. Succinct facts first. Respondent/plaintiff filed a suit for permanent injunction restraining the defendants from interfering in possession of plaintiff over the property in dispute and from raising any construction on any portion of the said property.

2.1 Upon notice, defendants appeared and filed written statement taking preliminary objections *inter alia* that suit is bad for non-joinder of Mohan Lal s/o Pehlad, Panna Lal and Inder Dev s/o Yad Ram. It was further pleaded that plaintiff was not in possession of the suit property and prayed for dismissal of suit.

2.2 On merits, it was pleaded that disputed plot was purchased by joint funds of Gordhan and Pehlad Dutt nearly 24 or 25 years ago. After mutual partition, four parts of plot were created, out of which one part was given to Kishan Dutt and he sold the same to Bhotu Kumar. Plaintiff did not spend even a single penny for construction on the land in dispute.

2.3 Replication was filed and issues were framed by learned trial Court. Parties to suit adduced their oral as well as documentary evidence in support of their pleadings. On appraisal of evidence vis-à-vis pleadings, learned trial Court vide judgment and decree dated 25.02.1982 decreed the suit of plaintiff for permanent injunction restraining defendants from raising construction on any portion of suit property. However, parties were left to bear their own costs.

3. Since petitioner/defendant did not comply with the decree passed by trial Court, respondent/plaintiff filed execution petition, wherein petitioner/defendant/judgment debtor filed objections which were dismissed vide order impugned herein.

4. Learned counsel for petitioner/defendant/judgment debtor would argue that the plaintiff/decreed holder had filed execution petition. Warrants of possession were issued by learned trial Court on 29.07.2004 for delivery of possession upon which bailiff reported that possession has been delivered. He further argued that since decree was not possession, therefore, learned Executing Court had no jurisdiction to issue warrants of possession and get the possession delivered to decree holder.

4.1 Objections were filed by petitioner/judgment debtor under Section 47 read with Section 151 CPC for restoration of possession to judgment debtor pleading that decree under execution was simply for

restraining the objectors from raising any construction over the property in question. There was no violation of decree. It was further pleaded that decree under execution was passed on 25.02.1982 and execution petition was filed on 19.08.2000 and the same is time barred.

4.2 On 01.05.2004 execution petition was pending for impleading legal heirs of Dhani Ram but without giving any opportunity to judgment debtors to comply with decree and even without recording evidence, warrants of possession were not issued.

4.3 Reply to application was filed stating that earlier objections were filed on 03.08.2004 and another objections were filed on 25.08.2004 and therefore subsequent objections were not maintainable.

5. Vide order dated 13.11.2006, objections were dismissed. Hence, instant revision petition.

6. Heard.

7. As far as argument canvassed by learned counsel for petitioner that decree was merely restraining them from raising any construction but the executing Court has got handed over possession of the property to decree holder. Impugned order was passed way back in the year 2004 and revision petition was preferred in the year 2006 i.e after a gap of two years and while admitting revision petition, no interim orders were passed with regard to restoring the possession of petitioner and resultantly for the past almost 20 years decree holder is in possession of suit property.

8. Impugned order is premised on the following reasons:

“xxx

12. On perusal of the judgment dated 25.2.1982, it transpires that while adjudicating issue no.1 i.e whether the

plaintiff is owner in possession of the suit property, the Court has given a specific finding that the plaintiff is owner in possession of the suit property, though while giving the relief, the Court passed a decree for permanent injunction restraining the defendants from raising construction on any portion of the suit property. Thus, from the judgment, it is clear that in the year 1982, the decree-holder was found in possession of the suit land. Now, it is the JD/Objector to show that as to how they came in possession, The appeal preferred by the JDs even in another civil suit filed by the brother of JDs claiming himself to be owner in possession of the plot in question was dismissed. Thus, it appears to the Court that possession, if any, of the objector was itself illegal. If at this stage, warrants of possession issued for restoration of possession in favour of objector, then it would negate the findings of the judgment and decree dated 25.2.1982. Though perusal of the order dated 1.5.2004, when the order for issuance of warrants of possession was passed, there is no reason or request from the decree holder side but it appears to the Court that there might be some oral submission which could not be mentioned in the order and warrants of possession issued in favour of decree-holder and against the JDs. While warrants of possession were being executed, it was found that JDs were in possession and it was delivered to the decree-holder and it appears that JDs violated the decree under execution. The failure on the part of the executing Court to give reasons has not miscarriage of the justice and it is a mere irregularity, while passing the order of warrants of possession. Since the JDs/objectors were not in possession and if now the possession is delivered in their favour, then the Court would become party in commission of illegal act. Since the possession of the JD/objector was not legal, therefore, they are not entitled for warrants of possession which is the basic requirement of exercise of power under Section 47 read with Section 151 CPC. Thus, in the present circumstances, the ratio of law in B.V. Patankar's case (supra) is of no help to the objectors.

13. There is no time limit for execution of decree of perpetual injunction. Moreover, the decree even could be executed against the legal representative of the JDs.

xxx. ”

9. As stated, the contention herein is that in execution of the decree, which was for restraining the petitioner from raising any construction, a warrant of possession was wrongly issued and the possession was wrongly got delivered to the decree holder. It would be seen that the same contention had also been raised before, duly

considered and repelled by the learned executing Court. I am inclined to agree with the reasons recorded as per record and the view taken by the learned Executing Court for the issuance of warrant for and delivery of possession in execution of the decree . The learned executing Court rightly dismissed the claim/ objections of the petitioner for restitution of possession. There seems no illegality in the impugned order nor can it be said the same has resulted in miscarriage of justice. There is no merit in the petition. The same is dismissed.

10. Pending applications, if any, shall also stand disposed of.

May 01, 2023
Shalini

(ARUN MONGA)
JUDGE

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