

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 6950 of 2018 (O&M)****Date of Decision: 15.11.2023**

Ranjit Singh

... Petitioner(s)

Versus

M/s Kuldeep Rai Marwaha and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashwani Kumar Chopra, Senior Advocate
with Mr. Vidul Kapoor, Advocate
for the petitioner(s).

Mr. Vipin Mahajan, Advocate
for the respondent No.9.

Anil Kshetarpal, J.

1. In this revision petition, the decree holder assails the correctness of the order dated 31.05.2018 passed by the Executing Court while dismissing his execution petition.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The total joint land measures 16 kanals and 9 marlas. The petitioner-Ranjit Singh is owner to the extent of half the share. Out of the total joint land measuring 16 kanals and 9 marlas, the land measuring 12 kanals and 7 marlas was leased in favour of the partnership firm M/s Kuldip Rai Marwaha Brik Kiln.

3. Half of the total property has been purchased by the tenant, namely M/s Kuldip Rai Marwah Brick Kiln. Two different litigations were

filed. Ranjit Singh filed a suit for partition of the joint property in which a

preliminary decree was passed on 10.01.2012 declaring that Ranjit Singh is entitled to the half share of the property, however, he or his predecessor-in-interest did not seek a decree for actual possession because the possession was with the tenant, namely M/s Kuldip Rai Marwaha Brick Kiln. The correctness of the preliminary decree has been upheld in appeal. Thereafter, the proceedings for final decree were initiated in which a final decree has been passed, however, the same is the subject matter of first appeal filed by M/s Kuldip Rai Marwaha Brick Kiln. In the second proceedings, Ranjit Singh filed a suit for possession by way of eviction after terminating the tenancy. The aforesaid suit was decreed by the Court of first instance on 18.09.2014. A decree for possession with respect to the land measuring 12 kanals and 7 marlas was passed. The petitioner-Ranjit Singh was also held entitled to recover the arrears of rent along with interest. The tenant-M/s Kuldip Rai Marwaha Brick Kiln filed an appeal, which was partly accepted. The First Appellate Court held that the decree for recovery of arrears of rent is set aside, however, the decree for possession was maintained. The operative part of the judgment passed by the First Appellate Court on 11.04.2017 is extracted as under:-

“25. No other point has been argued. From the above discussion, I am of the view that suit filed by the plaintiff-respondent no.1 is decreed with the modification that plaintiff-respondent no.1 is entitled for the possession of the leased property and share of the parties will be determined in the final decree, which is to be passed by the Court on the basis of preliminary decree. However, plaintiff-respondent No.1 is not

entitled for any recovery of arrears of rent. Accordingly, appeal is partly allowed with above said modification. Decree sheet be prepared accordingly. Counsel fee is assessed at Rs.1100/-. Any other miscellaneous application pending, if any, stands dismissed being not pressed. Appeal file be consigned to the Judicial Record Room, while the record of learned Lower Court be returned forthwith along with copy of judgment.”

4. The aforesaid decree for possession passed against the former tenant was sought to be implemented by filing an execution petition. It would be noted here that M/s Kuldip Rai Marwaha Brick Kiln was party to the partition proceedings.

5. In the execution petition filed for executing the decree for possession against the former tenant, the respondent- M/s Kuldip Rai Marwaha Brick Kiln filed an objection petition claiming that the decree for possession cannot be implemented because in the partition proceedings final decree for partition has been passed. The Court has chosen to dismiss the execution petition vide impugned order.

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

7. The learned senior counsel representing the petitioner, while relying upon the judgment rendered in ***T.Lakshmipathi and Others v. P.Nithyananda Reddy and Others (2003) 5 SCC 150***, contends that merger of tenancy would take place only if the tenant purchases the entire property.

The learned senior counsel submits that in this case, there is no merger because the tenant has only purchased half share of the property. The

learned senior counsel further submits that in the partition proceedings, relief of possession was not sought because the tenant was in possession of the property. He further submits that the decree for possession passed in favour of the petitioner cannot be frustrated only on the ground that an appeal against the final decree for partition is pending. The learned senior counsel asserts that as per the general rule, the Executing Court cannot go behind the decree.

8. On the other hand, the learned counsel representing the respondent No.9 submits that the petitioner-Ranjit Singh is co-owner to the extent of half share of the property and he is entitled to the possession thereof, which can only be delivered once the final decree for partition becomes final and conclusive.

9. This Court has considered the submissions. It is evident that in a suit for partition of the property, the petitioner, who is owner to the extent of half the share, has not sought relief for possession because the respondent- M/s Kuldip Rai Marwaha Brik Kiln was in possession of the property as a tenant. Hence, while executing the partition decree, the petitioner will not be entitled to take possession. Moreover, the tenancy, in favour of the respondent- M/s Kuldip Rai Marwaha Brik Kiln, has not merged into ownership because the partnership firm has not purchased the entire joint property. The tenancy stands terminated. There is a decree for possession in favour of the co-owner. Till the final decree for partition is passed, there is no severance of status because the property falling in the share of Ranjit Singh is yet to be finally identified. Moreover, the decree for possession against the erstwhile tenant has become final. The former tenant

has no right to remain in possession of the property.

10. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned order dated 31.05.2018 is set aside. The Executing Court is directed to proceed with the execution petition. The execution petition stands restored to its original number. The parties, through their learned counsel, are directed to appear before the Executing Court on 15.12.2023.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 15, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No