

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8414-2017 (O&M)
Date of decision : 02.05.2023

Harvinderpal Singh and Anr. ... Petitioner(s)

Versus

Dr. Jatinder Kumar Narula ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.S. Gurna, Advocate for the petitioners.

Mr. Vijay Sharma, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed challenging the order dated 27.07.2017 dismissing the objections filed by the petitioners herein.
2. Learned counsel for the petitioners has stated that he has also in the present case challenged the order dated 09.02.2017 vide which his application for amendment of the objection petition was dismissed. Though in the heading of the revision petition the challenge is to the order dated 27.07.2017, however, in the prayer clause the challenge is only to the order dated 09.02.2017. Taking it to be a typographical mistake at best, this Court is dealing with both the orders in the present revision petition.

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3. The present *lis* has a chequered history and hence detailed facts need to be noticed. The respondent, in the present case, i.e. Dr. Jatinder Kumar Narula filed a suit against Jagdish Kumar son of Ram Murti and Raj Dulari wife of Ram Murti for declaration to the effect that he (the plaintiff) was owner in possession of Kothi No.46, Passey Road, Patiala and the land appurtenant thereto comprised in Khasra Nos.201 to 208 and further for permanent injunction. The suit was decreed in favour of Dr. Jatinder Kumar Narula (plaintiff therein) vide judgment and decree dated 05.02.1993 (Annexure P-2). During the pendency of the suit, Raj Dulari executed an agreement to sell dated 31.07.1988 qua 1 biswa of land comprising of the suit property herein. Thereafter, a sale deed dated 27.08.1988 was executed qua 2 biswa of land in favour of the petitioner herein by Raj Dulari. Though the principle of *lis pendens* would apply since the sale was made during the pendency of the suit, however, a second suit for possession was preferred by the respondent - Dr. Jatinder Kumar Narula - and his brother, Harinder Kumar Narula against the petitioners herein. The said suit was decreed vide judgment and decree dated 20.11.2001 (Annexure P-1). Aggrieved by the said judgment and decree, an appeal was preferred which was dismissed by the First Appellate Court vide judgment and decree dated 24.11.2003 (Annexure R-5 appended with CM-24967-CII-2019). Still not satisfied, a regular second appeal being RSA No.2460 of 2004 was filed which was dismissed vide order dated 14.03.2005 (Annexure R-4 appended with CM-24967-CII-2019). Special Leave Petition (Civil) No.14264 of 2005 was filed challenging the order dated 14.03.2005 passed by this Court in RSA

No.2460 of 2004. The said Special Leave Petition was also dismissed vide order dated 29.07.2005 (Annexure R-2 appended with CM-24967-CII-2019). Thereafter, an execution petition (Annexure P-3) was preferred by the respondent herein. In the execution petition, an application was filed by the petitioners herein for appointment of a revenue official to demarcate the property before the possession could be handed over. The said application was dismissed by the Executing Court vide order dated 26.08.2013. Aggrieved by the said order, a revision petition being CR No.7367 of 2013 was filed which was dismissed vide order dated 16.05.2016 (Annexure R-1 appended with CM-24967-CII-2019) holding as under :

“Perusal of the judgment and decree passed by the learned trial Court would make it evident that the decree-holders/plaintiffs filed the suit for possession in regard to 152 sq. yds. of land (91 ft. x 15 ft.) i.e. 02 biswas out of Khasra No.203 that has been depicted in the site plan attached with the plaint situated in Village Lehal, Tehsil and District Patiala. Any dispute with regard to identity of the suit property was required to be raised by the petitioner during trial. As suit of the respondent/decreed-holder qua the suit property has been decreed, no fault can be found in the order impugned dismissing application for demarcation of Khasra No.203. However, the Executing Court is directed to ensure that possession of 152 sq. yds. area is delivered to the decree-holder(s) in strict conformity with the site plan appended with the plaint.”

4. Subsequently, an application for amendment of the objection

petition was filed which was dismissed vide order dated 09.02.2017. A revision petition being CR No.2535 of 2017 was yet again filed. Meanwhile, the Executing Court dismissed the objections itself filed by the petitioners herein vide order dated 27.07.2017. The CR.2535 of 2017 was disposed off vide order dated 31.08.2017 holding as under :

“This revision petition has been filed against the order dated 09.02.2017 passed by Civil Judge (Senior Division), Patiala whereby application under Order 6 Rule 17 CPC for amendment of the objections under Section 47 CPC was dismissed.

Earlier a Civil Revision No.7367 of 2013 was filed which was decided by the High Court on 16.05.2016. The Executing Court was directed to ensure delivery of possession in respect of 152 sq. yards area to the decree holder in strict compliance and conformity with the site plan.

Learned counsel for the petitioner states that the objections filed before the Executing Court have been dismissed vide order dated 27.07.2017 and the said order is appealable in nature. The petitioner would be at liberty to file appeal along with an application for amendment. The said application would be decided by the Executing First Appellate Court in accordance with law. The very filing of the application along with an appeal under the present order would not be construed to be an implied permission in favour of the petitioner to sustain such type of objection.

In the event of filing such an appeal along with application for amendment, the Executing First Appellate Court would be obligated to decide the same

in accordance with law as well as in the light of order dated 16.05.2016 passed by the High Court in Civil Revision No.7367 of 2013.

Disposed of ”

5. Thereafter, the petitioners filed Civil Revision No.6752 of 2017 which was disposed off vide order dated 29.09.2017 (Annexure P-10). The operative portion of the said order reads as under :

“In compliance of the abovesaid order dated 31.08.2017 passed by this Court, petitioners have not filed any appeal but they have approached this Court by way of instant civil revision petition. In case the petitioners were intending to do so, they were not competent to bypass the abovesaid order dated 31.08.2017 passed by this Court. In that eventuality, petitioners were under legal obligation to seek appropriate modification in the abovesaid order dated 31.08.2017, permitting them to file revision petition instead of appeal, even if the impugned order dated 27.07.2017 was not appealable, as pointed out by learned counsel for the petitioners.

In view of the above, present revision petition is disposed of with liberty to the petitioners to seek the appropriate modification in the abovesaid order dated 31.08.2017 passed by this Court.

Disposed of, accordingly.”

6. Subsequently, an application being CM-22078-CII-2017 in CR-2535-2017 for modification of order dated 31.08.2017 was filed which was disposed off vide order dated 23.10.2017 (Annexure P-9) with the following direction :

“Since the applicant was granted liberty to file an appeal along with application for amendment before the Executing First Appellate Court in accordance with law, therefore, this application needs to be allowed, modifying the order dated 31.08.2017 to the effect that the impugned order dated 09.02.2017 is revisable in nature and the applicant would be at liberty to avail revisional jurisdiction of the competent Court in accordance with law.

Application stands disposed of.”

7. Hence, the present revision petition.

8. Learned counsel for the petitioners has raised a single argument i.e that the execution petition filed at the behest of Dr. Jatinder Kumar Narula (respondent herein) was not maintainable as the decree was in favour of Dr. Jatinder Kumar Narula and his brother, Harinder Kumar Narula and therefore the execution petition ought to have been filed by both of them. Learned counsel for the petitioners would further contend that this was the amendment which he had sought in the objection petition which stood dismissed vide order dated 09.02.2017. No other argument has been raised by learned counsel for the petitioners.

9. *Per contra*, learned counsel for the respondent has contended that the execution petition can be filed either jointly or by anyone of the joint decree-holders as laid down in Order 21 Rule 15 of the Code of Civil Procedure, 1908 (CPC).

10. Heard.

11. It is oft said that the travails of a decree holder commence after he has obtained a decree in his favour. In the present case the petitioners herein have left no stone unturned to defeat the rights of the respondent who has a decree in his favour which was passed in the year 2001. Since 2001 the respondent is being dragged from one Court to another because of which he has been unable to reap the benefits of a decree in his favour.

12. The argument of learned counsel for the petitioners that the amendment was wrongly denied, even if accepted, it would be required to be seen as to what is the amendment being sought. The only amendment being sought was that the respondent herein could not individually file the execution petition. Even if for the sake of arguments it is considered that the amendment application is allowed, even then the objection raised that the execution petition is not maintainable at the behest of one of the decree-holders deserves to be rejected.

13. Order 21 Rule 15 of CPC reads as under:-

*“15. Application for execution by Joint decree-holders. -
(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.
(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under*

this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.”

14. The decree dated 20.11.2001 reveals that there are no conditions which have been imposed in the decree which would make the execution application at the behest of one of the decree-holders not maintainable. Learned counsel for the petitioners has been unable to convince this Court as to how in the absence of any condition to the contrary, the execution petition was not maintainable at the behest of the respondent herein.

15. In view of the above, the present revision petition is dismissed as being totally frivolous. Needless to say that the Executing Court shall execute the decree after due compliance of the provisions of Order 21 Rule 15(2) CPC.

16. Dismissed. Pending applications, if any, also stand disposed off.

02.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO