

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

CR-3283-2019(O&M)

Reserved on:-2.5.2023

Date of Pronouncement:-9.5.2023

Sarwan Singh (since deceased) through his legal representative

...Petitioner

Versus

Makhan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dinesh Nagar, Advocate
for the petitioner.

Mr.K.S. Dadwal, Advocate and
Ms.Neha Jain, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 4.2.2019 vide which the Executing Court of Civil Judge, Hoshiarpur had dismissed the execution petition of petitioner/defendant Sarwan Singh (since deceased) through his legal representative, seeking execution of the counter claim decreed vide judgment and decree dated 11.4.2016.

2. Briefly stated, facts of the case are that plaintiff Makhan Singh had brought a suit against his father Sarwan Singh (since dead) now represented through his legal representatives, seeking a decree for permanent injunction restraining the defendants from interfering in peaceful and lawful possession of the plaintiff over a double storeyed house of 10 Marla situated at village Mohalla Balian, Mahilpur, Tehsil Garshankar, District Hoshiarpur.

3. On getting notice, the defendant through legal representatives had appeared and filed a counter claim for mandatory injunction directing plaintiff/respondent No.1 to vacate the portion of the house in question shown in red colour in the site plan attached.

4. After contest, the Court of Civil Judge(Jr.Divn.), Hoshiarpur vide judgment and decree dated 11.4.2016 dismissed the suit of the plaintiff for grant of permanent injunction. Though the trial Court had observed that defendants/counter claimants have proved themselves to be in better position than that of plaintiffs and that possession of the plaintiffs has been adverse and hostile towards the defendants. Both the parties have remained unsuccessful to establish their clear title over the suit property. The trial Court did not accept the counter-claim in clear terms so as to issue any direction to the plaintiff/respondent No.1 to vacate the portion of house in question in his possession.

5. However, subsequently, the defendants filed an execution petition so as to seek possession of the portion shown in red colour in the site plan Ex.D1 from plaintiff/respondent. The plaintiff/respondent had put in appearance and filed objections. The execution application was dismissed vide the impugned order. Para No.7 of the order is quite relevant, which for ready reference is being reproduced as under:

7. In the instant case, it is not the case of the applicant/LRs of Sarwan Singh that Makhan Singh was ever disinherited by Sarwan Singh from his properties by executing any will etc. Therefore, assuming that decree for mandatory injunction has been passed in favour of Sarwan Singh it cannot be executed against Makhan

Singh as on the death of Sarwan Singh, Makhan Singh also succeeded to his property being Class-I heir. The possession of Makhan Singh in the suit property after the death of Sarwan Singh will constitute to be in the capacity of co-owner in the suit property and his possession is not different i.e. from other LRs of Sarwan Singh. Therefore, whereas the decree under execution is incapable of being executed in absence of any specific direction at the same time does not even maintainable against Makhan Singh. In view of foregoing discussion objections dated 1.8.2018 stands allowed. Consequently, instant execution stands dismissed. File be consigned to the record room.

6. Such order left the legal representative of deceased defendant Sarwan Singh aggrieved and she has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents. Though only respondent No.1 has put in appearance through counsel.

7. I have heard learned counsel for the petitioner besides going through the record and I find that there is absolutely no merit in the revision petition.

8. When the counter claim filed by the LRs of deceased defendant Sarwan Singh had not been allowed specifically by the trial Court, such LRs could not possibly have approached the Court seeking possession of the portion kept by plaintiff/respondent. The trial Court had though made observations that LRs of defendant were on better footing than plaintiff/respondent but the trial Court had no where directed that the

possession of portion of the house be obtained from the plaintiff/respondent and given to other LRs of deceased defendant Sarwan Singh. The Executing Court was justified in dismissing the execution petition and no fault can be found with the order.

9. The impugned order passed by the Executing Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 7.9.2021 passed by this Court directing the parties to maintain status quo thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No