

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

CR-4771-2019(O&M)

Date of decision:-3.3.2023

Kuldeep Singh and others

...Petitioners

Versus

Nihal Singh and others

...Respondents

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

Present: Mr.Sumit Mahajan, Sr.Advocate with
Mr.Saksham Mahajan, Advocate
for the petitioners.

Mr.S.S. Sidhu, Advocate
for respondents No.1 to 3.

H.S. MADAAN, J.

CM-168-CII-2023

Application is allowed, as prayed and legal representative of respondent No.3 Harbans Kaur is brought on record, subject to all just exceptions. Amended memo of parties is taken on record.

CR-4771-2019(O&M)

1. Briefly stated, facts of the case are that plaintiffs Nihal Singh and others had brought a suit against defendants Kuldeep Singh and others seeking a declaration that they along with proforma defendants are owners in possession of suit land measuring 116 kanals 6 marlas and decree dated 8.11.1982 in favour of defendants with regard to the suit land is illegal so are all subsequent transactions i.e. mutation, partition, transfer and entries etc. The plaintiffs had further craved for grant of permanent injunction restraining the defendants from alienating the suit property or creating any

charge over it; in addition seeking possession of the suit land free from all encumbrances from the defendants.

2. That civil suit was decreed vide judgment and decree dated 3.11.2017. In that judgment and decree, in addition to the relief of declaration, permanent injunction and possession, the plaintiffs were held entitled to annual mesne profits @ Rs.15,000/- per acre with 9% interest from the defendants for the use and occupation of suit land w.e.f. the date of filing the suit till the time possession of suit land was handed over to the defendants.

3. The plaintiffs had filed a petition for execution of such judgment and decree in their favour.

4. On getting notice, the defendants, who had contested the suit and were arrayed as JDs in the execution petition appeared and filed objections contending that the execution petition was not maintainable and the judgment and decree passed could not be executed with regard to the suit land, which was part of total agricultural land measuring 432 kanals 3 marlas because no partition had taken place till date. Another objection raised was that the appeal against the judgment and decree passed by the trial Court was pending, therefore, such decree could not be executed.

5. The objections so filed were orally opposed on behalf of the DHs/plaintiffs.

6. Vide order dated 17.7.2019, the objections were dismissed. The warrants of possession were ordered to be issued. Similarly a show cause notice under Order 21 Rule 37 CPC was also issued to JDs to

appear and to show cause as to why they should not be sent to civil imprisonment for not obeying the decree passed.

7. Feeling aggrieved by the said order, the JDs have preferred the present revision petition before this Court, notice of which was given to respondents/DHs, who put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record and I do not find any infirmity or illegality in the impugned order.

9. There being a decree in favour of the plaintiffs/decreed holders, they have every right to approach the Court to get it executed and the Court was bound to ensure that the decree in favour of the plaintiffs was executed and they could reap the fruit of such decree. Merely because the appeal against the decree sought to be executed is pending is no ground to stay its execution. Though position is different if the Appellate Court passes any interim order staying the execution of decree passed by the trial Court or directing that the status of the subject matter of the decree be not disturbed till further orders or during pendency of the appeal. When the order was passed, this Court had not granted any interim relief to the appellants/JDs/defendants. Though it is stated that subsequently on 26.8.2019, the parties have been directed to maintain status quo regarding possession in RSA-2633-2019 titled 'Kuldeep Singh and others Versus Nihal Singh and others', but as the things stand on the day when the impugned order was passed neither any order staying the execution and implementation of decree in question nor any order directing the parties to maintain status quo regarding possession was there.

10. Thus the objections filed by the JDs were rightly rejected by the Executing Court and warrants of possession were issued and notice under Order 21 Rule 37 CPC was ordered to be served upon the JDs as mentioned above. However, since a status quo order has been passed in 'RSA-2633 of 2019', the Executing Court is to comply with the same. However, even at the cost of repetition, it may be stated that when the impugned order was passed, no such order granting interim relief to the respondents/JDs was there. Therefore, the Executing Court was fully justified in passing that order.

11. The impugned order passed by the trial 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.

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

The interim order dated 30.9.2019 passed by this Court directing the Executing Court to adjourn the case to a date after the date fixed by this Court thus comes to an end.

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

3.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No