

CM-17457-C-II-2023 in/and CR No.5118 of 2023 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.109

Case No. : CM-17457-C-II-2023 in/and
CR No.5118 of 2023 (O&M)

Date of Decision : November 16, 2023

Smt.Chanderwati and another Petitioners
vs.
M/s Rajinder Kumar Arjun Singh,
Commission Agents and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ashok Kumar Khubbar, Advocate
for the petitioners.

Mr. Parminder Singh, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. This revision petition has been filed against the order dated 17.08.2023 (Annexure P-8), passed by learned Civil Judge (Senior Division), Kurukshetra (for brevity – the Executing Court), whereby application moved by the petitioners for issuing warrant of possession qua share of the land has been dismissed and warrant of possession regarding property in question has been issued.

2. The brief facts, as culled out from the petition, are that respondents no.1 and 2 filed a suit that they are partners in firm and the said firm purchased land measuring 03 bighas vide sale deed dated 14.06.1985 and also land measuring 02 bighas 19 biswe vide sale deed dated

19.06.1985. Respondent no.3 had sold 03 bighas 19 biswe of land being 79/1286th share of total land measuring 64 bighas 06 biswe in favour of the petitioners vide sale deed dated 05.12.2006. A copy of plaint has been annexed as Annexure P-1. The said suit was decreed vide judgment and decree dated 31.01.2015 (Annexure P-2). Appeal against the said judgment and decree was dismissed vide judgment and decree dated 19.09.2018.

3. The petitioners have challenged the aforesaid judgment and decree dated 19.09.2018 by way of filing Regular Second Appeal bearing **RSA No.1744 of 2019**, which is pending in this Court. Respondents no.1 and 2 have filed the Execution Petition along with Farad Talika (Annexure P-3). The Executing Court issued warrant of possession against the petitioners with a direction to the concerned SHO to provide police help to the executing officials while executing warrant of possession. The petitioners moved an application for issuance of warrant of possession qua share of suit land only. The learned Executing Court dismissed the application and issued warrant of possession regarding khasra no.540(3-19).

4. Learned counsel for the petitioners has submitted that in the plaint, possession of specific khasra number was not sought. In the decree dated 31.01.2015, there is no mention of particular khasra number. Simple decree of possession was passed by the Executing Court while issuing warrant of possession for specific khasra number, on the basis of Farad Talika. At the most, the Executing Court could have ordered only for symbolic possession. In support of his contentions, learned counsel for the petitioners has placed reliance on a judgment of Hon'ble Supreme Court in

Gurdev Singh vs. Narain Singh – 2008(1) RCR(Civil) 125, a judgment passed by Full Bench of this Court in Ram Chander vs. Bhim Singh and others – 2008(3) RCR(Civil) 685 and also a judgment of this Court in the case of Kashmir Singh vs. Tana and others – 2000(4) RCR(Civil) 6.

5. Learned counsel for respondents no.1 and 2/deed-holders has argued that possession of specific khasra numbers is ordered to be given to the deed-holders and sale deed has been set aside, so, deed-holders/respondents no.1 and 2 are to be given possession of those specific khasra numbers, on which judgment-debtors came in possession on the basis of sale deed.

6. I have heard submissions of learned counsel for the parties and have through the record.

7. A copy of sale deed dated 05.12.2006, executed by Rajender Kumar – respondent no.3 in favour of the petitioners, has been placed on record as Annexure R-1. It has been specifically mentioned therein that possession and title of the sold land has been given to the buyers of khasra no.540(3-19). In other words, in pursuance of the sale deed, the petitioners got possession of the specific khasra numbers. As per the copy of the plaint (Annexure P-1), the prayer clause reads as under :-

“It is, therefore, prayed that a decree for declaration to the effect that the sale deed No.8495/1 dated 5.12.2006 executed by defendant No.1 in favour of defendants No.2 & 3 is illegal, null & void, nonest, void-ab-initio and not binding

on the rights of the plaintiffs and firm M/s Rajinder Kumar Arjun Singh, Commission Agent, Ladwa is the exclusive owner of the suit land, and a decree for possession of the suit land with consequential relief of permanent injunction restraining the defendants No.2 & 3 from alienating, transferring, mortgaging the suit land or from changing the nature of the suit land in any manner whatsoever, may kindly be passed in favour of the plaintiffs and against the defendants, in the interest of justice.”

8. The suit was decreed vide judgment and decree dated 31.01.2015. A copy of the decree-sheet is attached as Annexure P-2, operative part of which reads as under :-

“It is ordered that the suit of the plaintiffs is hereby decreed with costs to the effect that sale deed bearing no.8495/1, dated 5.12.2006 being illegal, null and void, is hereby set aside and mutation no.746 sanctioned on the basis of said sale deed is hereby cancelled. A decree of possession with consequential relief of permanent injunction is also passed in favour of the plaintiffs by restraining defendants no.2 and 3 from alienating, transferring, mortgaging the suit land to any other person or from changing the nature of

the suit land in any manner.”

9. The appeal against the aforesaid judgment and decree has also been dismissed on 19.09.2018. Regular Second Appeal bearing **RSA No.1744 of 2019** is pending in this Court, in which no stay has been granted. Since the petitioners have got possession of specific khasra number, on the basis of sale deed dated 05.12.2006, which has been set aside and possession of property which was handed over to the petitioners vide sale deed, is ordered to be granted to the respondents/decrees-holders, so, the Executing Court is bound to give possession of that property to the respondents/decrees-holders. No doubt, the Executing Court cannot go behind the decree, but the Executing Court is bound to get the decree executed in its true letter and spirit.

10. Coming to the authorities relied upon by learned counsel for the petitioners, in case of **Gurdev Singh (supra)**, it is held by Hon'ble Supreme Court that the Executing Court cannot go behind the decree. The decree was passed for permanent injunction restraining the defendant from planting tree on a particular khasra number. The Execution was filed, inter alia, for removal of tree from the land in question. In the case of **Ram Chander (supra)**, it is held by Full Bench of this Court that if a co-owner sells land from joint khewat by reference to specific rectangles and khasra numbers, then vendee becomes a co-sharer in joint khewat. In case of **Kashmir Singh (supra)**, decree for joint possession was passed. So, all these authorities are distinguishable on facts and are of no help in this case.

11. During the course of arguments, it has been brought to the

notice of this Court by learned counsel for the respondents that possession of the suit property, in pursuance of warrant of possession, has already been given to decree-holders/respondents no.1 and 2 and the Execution Petition has been dismissed as withdrawn being fully satisfied.

12. In the light of the above statement, this Court is of the view that there is no illegality in the impugned order passed by the learned Executing Court. Accordingly, the present revision petition, being devoid of any merit, is hereby dismissed.

13. Pending applications, if any, shall stand disposed of along with this judgment.

November 16, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.