

after the decree in his favour was passed. The original defendants filed the objection petition. The same was dismissed by the Executing Court on 19.10.2019. Thereafter, the judgment debtors filed CR-235 of 2020, which was dismissed on 14.01.2020. The operative part of the order reads as under:

“The petitioners/judgment debtors have not claimed either in their objections; or even before this Court; that the judgment debtors are not in possession of the suit property; as of today. Rather, it is the case of the petitioners that the petitioners/judgment debtors have throughout been in possession of suit property and the decree holder had got a decree; based upon a factually wrong finding recorded by the Trial Court that he was in possession. I am afraid that this cannot be the scope of objection to be entertained on behalf of the judgment debtor. An execution of a decree, pre supposes the validity of the decree, whereas, the argument of learned counsel for the petitioners is indicative of disputing the validity of the decree itself. Although the petitioners claim that to dispute the findings of the trial Court they have filed regular second appeal before the High Court, however, it is not even disputed that there is no stay from the High Court as such. Bare provision of the CPC prescribes that in case of appeal, mere filing of an appeal would not be taken as a stay against the judgment and decree of the Courts below. Hence, mere pendency of the appeal cannot be taken as any ground to dispute the concurrent findings of facts recorded by the Courts below.

Although learned counsel for the petitioners has laid much stress on the fact that to seek execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been

dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 of Order 21 CPC do not prescribe any such condition. Rather, Order 21 Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 of Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. "Samee Khan v. Bindu Khan, 1998(4) RCR(Civil) 125 (SC)" to mean that in an execution proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in 'Kapoor Singh v. Om Parkash, 2009(4) PLR 178'. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings."

2. After the dismissal of the revision petition, the petitioner society filed an objection petition on 28.01.2020 i.e. within 14 days from the date the revision petition filed by the judgment debtors was dismissed, claiming that they are in possession of the property. The Executing Court has dismissed the objection petition.

3. Learned counsel representing the petitioner contends that these objection petitions have been filed by the third party and, hence, it was incumbent upon the court to frame issues and grant opportunity to the petitioners to lead evidence. He further contends that the original defendants not only contested the suit but also objected to the

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suit on the ground that the Gurdwara is managed and run by the members of the society.

4. This Court has considered the submissions made by learned counsel representing the parties.

5. It is not necessary that in every case, the third party objections are required to be decided only after framing the issues. It depends upon the nature of objections and prima facie substance therein. The petitioner herein is a society. It is managed by its Members and some of them were already a party to the suit. They contested the suit tooth and nail. Thereafter, they contested the execution petition. After having lost from the High Court in a revision petition on 14.01.2020, they filed the objection petition through their society. In fact, the Members constitute the Society which acts through its Members, who have already contested and lost the litigation.

6. In view of the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

8. All pending applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

03.11.2023

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No