

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.125

Case No. : C. R. No. 6566 of 2023

Date of Decision : November 06, 2023

Chander Bhan		Petitioner
vs.		
Parmod Kumar and others		Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

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

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GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 13.10.2023 (Annexure P-5), passed by learned Civil Judge (Junior Division), Ludhiana (for brevity – the Executing Court), whereby third-party objections filed by Objector/petitioner, against the judgment and decree dated 09.08.2012, have been dismissed.

2. Brief facts, as culled out from the paper book are that respondent no.1/plaintiff filed suit for possession under Section 6 of the Specific Relief Act against respondents no.2 to 8/defendants. The said suit was decreed vide judgment and decree dated 09.08.2012 (Annexure P-1) and defendants were directed to restore the possession of the plaintiff within two months of passing of judgment. The plaintiff/decreed-holder/respondent no.1 filed the Execution Petition of the said judgment and decree. The petitioner filed objections (Annexure P-3) on the ground that the Execution Petition

was not maintainable. The decree-holder has suppressed the material facts from the Court. The Objector was never impleaded as party and decree was obtained at the back of the petitioner by misleading the Hon'ble Court. Decree-holder has played a fraud with the Objector. The Objector received warrant of possession on 18.09.2023. On inquiry, he came to know that the decree-holder had obtained the judgment and decree of the property, in which the Objector was a tenant, having actual and physical possession of the said property. Since 2005, he has been residing in the property along with his family members and paying rent to the landlord continuously. The said judgment and decree is nothing but mere abuse of process of law and the suit was filed with ulterior motive.

3. Learned counsel for the petitioner has argued that the petitioner has been in possession of the property in question since 2005. He was not impleaded as a party. The decree has been obtained at his back. The petitioner is a bona fide tenant in the property in question. His possession can be ascertained from the insurance policy (Annexure P-6) he obtained regarding his two-wheeler on the said address. He has also received letter regarding home loan on this address. His children were studying in the school and the Diary issued by the school in the name of son of the petitioner also shows the same address. There are various documents to show that the petitioner is in possession of the property in question. The objections were wrongly dismissed.

4. I have heard submissions made by learned counsel for the petitioner and have perused the paper book.

5. The suit dated 04.10.2006 was filed by plaintiff/respondent no.1

on the ground that he was a tenant over the suit property. He had been residing in the said house for the last 17-18 years. Balbir Kaur was the landlady of the said house. He was threatened by defendants no.2, 3 and 4 that he would be dispossessed from the suit property. So, he filed suit for permanent injunction. The Court ordered to maintain status quo. After passing of order of status quo, defendants violated the said order. They started harassing the plaintiff. On 04.07.2005, the defendants took all the machines and domestic goods of the plaintiff. His neighbour told him that all the articles and machinery were put into a Tempo and carried away. He filed the suit for possession on the basis of previous possession. The learned Trial Court was pleased to decree the suit and directed the defendants to hand over the possession. It is submitted that Regular Second Appeal is pending. On asking, counsel for the petitioner submits that no stay has been granted in favour of the defendants. At the most, it can be said that the defendants, after forcibly dispossessing the decree-holder from the suit property, in violation of the status-quo order, put the petitioner in possession. The petitioner has no right to remain in possession of the suit property. In the written statement, filed by defendant no.1 in the suit, defendant no.1 did not disclose that possession of the property had already been given to the petitioner at that time. Rather, plea of the defendants was that the plaintiff, on his own, handed over the possession of the suit property. The petitioner has no better right over and above the judgment-debtors, who had no right to take possession forcibly and give the possession to some other person, which was not even disclosed in the written statement.

A person, who has entered the possession through illegal means, is not

entitled to agitate before the Executing Court that now, he is in possession and his possession be protected.

6. In view of the above discussion, I do not find any ground to interfere in the impugned order dated 13.10.2023 (Annexure P-5), passed by learned Executing Court. The present revision petition is without any merit and is accordingly dismissed.

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

November 06, 2023

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(GURBIR SINGH)
JUDGE

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