

138 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2593-2023 (O&M)

Date of decision: 21.02.2024

Tek Bahadur Singh (deceased) through Lrs and others

....Petitioners

Versus

Surjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sherry K Singla, Advocate for the petitioners

ANIL KSHETARPAL, J (Oral)

1. On 19.01.2024, the following order was passed by this

Court:-

1. The petitioners herein are judgment debtors No.1, 2 and 3. Their objection petition has been dismissed by the Executing Court. The respondents despite service of notice have not entered appearance.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Surjit Kaur along with her minor child Sh.Gursimrat Singh (decree holders) filed a suit for recovery of Rs.4,00,000/- while claiming that the aforesaid amount was paid by the husband of plaintiff No.1 at the time of execution of the agreement to sell dated 29.06.2011, with respect to the land measuring 52 kanal and 3 marlas out of the land measuring 57 kanals and 11 marlas comprised in Rectangle No.40 and 28, Khewat No.270, Khatauni No.576, Hadbast No.214. The aforesaid suit was partly decreed with the following observations:-

“It is ordered that the suit of the plaintiffs is partly decreed with costs in the manner that the plaintiffs are held entitled for recovery of Rs. Three lacs from the defendants no.1 to 3 paid by Sukhdeep Singh to the defendants no.1 to 3 as earnest money of agreement to sell dated 29-6-2011. As the plaintiffs have failed to prove that the remaining defendants i.e. defendants no.4 to 10 ever agreed to

execute the sale deed in favour of Sukhdeep Singh or received any earnest money, hence the suit of the plaintiffs against defendants no.4 to 10 stand dismissed. The suit of the plaintiffs with regard to damages of Rs. One lac is also dismissed as the plaintiffs have failed to prove that they are entitled to damages of Rs. One lac as prayed for.”

4. The defendants (the petitioners herein) filed the first appeal. The First Appellate Court has affirmed the judgment and decree passed by the trial Court, however, in para 16 made following observations:-

“For the reasons recorded above, this Court is of the considered opinion that the learned Trial Court has rightly recorded its findings on all the issues and as such the same are affirmed. Consequently, the judgment and decree under appeal are upheld and the appeal filed by appellants-defendants No.1 to 3 is dismissed with costs. However, it is made clear that the plaintiffs-respondents will have no right to claim possession of the suit land regarding which agreement to sell Ex.P21 was executed.”

5. The decree holder filed an execution petition in order to recover the amount. On 06.05.2019, the Executing Court directed the decree holder to hand over the actual possession as specified in the agreement to sell dated 29.06.2011, within a period of one month.

6. Subsequently, the decree holder filed another execution petition claiming that the possession of suit land was never delivered to the decree holder and the judgment debtors were not in possession of the land and therefore, the question of delivery of possession in favour of the decree holder does not arise. The petitioners filed the objection petition, which has been dismissed by the Executing Court. It is evident that on the one hand, the petitioners claim that they are entitled to return of possession of the suit land before they pay the decretal amount, whereas, on the other hand, it is the stand of the decree holder that she is not in possession of the property as it was never delivered to them.

7. Keeping in view the aforesaid possession, the dispute is required to be resolved. Hence, Sub-Divisional Magistrate of the area in District Ferozepur is directed to submit a report after ascertaining the factual possession from the spot. It is expected that the Sub-Divisional Magistrate shall also submit a report on a question “Whether the possession was ever delivered to the decree holders namely Smt. Surjit Kaur or Sh. Gursimrat Singh or not?”

8. The Court Master is requested to supply a copy of the order to Sh. Gurpreet Singh, Additional Advocate General, Punjab, who is requested to forward the

same to the concerned Sub-Divisional Magistrate for necessary action.

9. The report be submitted within a period of one month, from today, positively.

10. List for awaiting report on 21.02.2024, in the urgent list.”

2. The office of the Sub Divisional Magistrate, Ferozepur has submitted its report dated 20.02.2024, which reads as under:-

“It is submitted that the report on the above cited subject, has been obtained from the Tehsildar Ferozepur in this office through his letter No.203/OK dated 19.02.2024 as per the report Girdawri Khasra number 28//22/2-23-24/1 Total 13 kanals-0marls is in the name of Karnail Singh Son of Sajjan Singh son of Buta Singh “gair marusi” and the Girdawri of Khasra number 40//2/2-3-8, 40//9/1-12/2-13-18-19/1-23/2 total 44 kanals 11 marls is in the name of Jarnail Singh son of Sajjan Singh son of Buta Singh as “gair maurasi” since 2011.

Besides this, the Tehsildar, Ferozepur carried out site inspection, according to which Jarnail Singh son of Sajjan Singh son of Buta Singh in in possession and is cultivating the land comprised Khasra number 28//22/2-23-24/1, 40//9/1-12/2-13-18-19/1-23/2 total 57 kamals 11 marls and regarding this possession, no dakhil proceedings were conducted for transferring the possession of the same.”

3. Thus, it is evident that the decree-holder is not in possession of the property. It is not even the petitioners' case that she cultivated the land even for a single day. In this case, the respondents (decree-holders) namely Surjit Kaur and her minor child filed a suit for recovery of Rs.4,00,000/- which was paid by her deceased husband at the time of the execution of the agreement to sell. The suit was partly decreed. It was ordered that the decree-holders are entitled to recovery of Rs.3,00,000/-. The First Appellate Court, while affirming the judgment and decree held that the plaintiffs (decree-holders) will have no right to claim possession of the property. Now, the petitioners, who are judgment debtors, are

objecting to refund of the earnest money as ordered by the court on the ground that the decree-holder is required to surrender the possession back to the judgment debtors. The Executing Court has found that the decree-holder is not in possession and therefore, the petitioners, who are judgment debtors, are required to pay the amount. This fact is corroborated by the report of the Sub Divisional Magistrate.

4. Keeping in view the aforesaid facts, no ground to interfere is made out.
5. Hence, dismissed.
6. All the pending miscellaneous applications, if any, are also disposed of.

21.02.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No