



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2658-2019 (O&M)

Reserved on: 25.07.2024

Pronounced on: 05.08.2024

INDRAWATI

.... PETITIONER

Vs.

Duli Chand and others

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Aashish Chopra, Senior Advocate with
Ms. Priyanka Kansal, Advocate and Ms. Nitika Sharma, Advocate,
for the petitioner.

Mr. P.S. Khurana, Advocate, for respondents No.1, 4 to 6.

DEEPAK GUPTA, J.

Petitioner herein was defendant No.17B/counter claimant in Civil Suit No.318 of 2009 titled '*Matu Ram and others Vs. Maha Singh and others*', in which his counter-claim was decreed on 07.11.2011; whereas, the suit of the plaintiffs Matu Ram etc. was dismissed. Thus, for the purpose of his counter-claim, petitioner is the decree-holder. He is aggrieved by the impugned order dated 05.04.2019 (*Annexure P7*) passed by Id. Executing Court, whereby his application under Order 21 Rule 32 CPC read with Section 151 CPC for enforcement of the judgment and decree dated 07.11.2011 regarding his counter-claim, has been dismissed.

2.1 It is contended by Id. Senior counsel that suit of the plaintiffs (*contesting respondents herein*) seeking declaration and permanent injunction regarding the property in dispute was dismissed; whereas; the counter-claim filed by the petitioner/defendant No.17B was decreed on 07.11.2011. Id. Senior counsel has drawn attention towards the copy of counter-claim (*Annexure P1*), wherein it was specifically pleaded by defendant No.17B/petitioner that she is the owner in cultivating possession of the suit land. Relief was specifically claimed to the effect that plaintiffs and proforma defendants be restrained from illegally and forcibly occupying the suit land. The said counter-claim of defendant No.17B was decreed.

2.2 Id. Senior counsel contends further that the appeal filed by the plaintiffs was dismissed by Id. Additional District Judge, Bhiwani on 23.05.2014 (*Annexure P3*), wherein it was specifically observed that defendant No.17B/counter-

claimant is owner in possession of the property in dispute. Ld. counsel submits that though the Regular Second Appeal was filed by the plaintiff before this Court bearing RSA No.5664 of 2014, but it is still pending and no stay was granted therein.

2.3 As judgment debtors of the counter-claim i.e., plaintiffs made attempts to dispossess her (counter-claimant-Decree Holder), she was compelled to file an execution for enforcement of the decree passed in her counter-claim, which was allowed by the Executing Court vide order dated 10.09.2013 (*Annexure P-4*), specifically observing that decree holder/counter-claimant was in possession of the property in dispute and directing the JDs/plaintiffs to respect the enforcement of the judgment and decree dated 07.11.2011.

2.4 Ld. Senior counsel submits that taking advantage of the pendency of the Regular Second Appeal before this Court, the JDs/respondents/plaintiffs again tried to interfere in the peaceful possession of the petitioner/decreed-holder. It is alleged that 02.10.2017, the petitioner along with her husband, after harvesting the crops on the suit land, had gone to Delhi to meet their son and when she returned back from Delhi, she came to know that suit property had been illegally possessed by the JDs/respondents/plaintiffs along with the proforma defendants. Petitioner requested them many times to vacate the land, but in vain, which forced her to file fresh Execution Petition under Order 21 Rule 32 read with Section 151 CPC for enforcement of the decree passed in the counter-claim. Despite notice and appearance of the JDs before the Court so as to file objections, if any, and despite availing numerous opportunities, they did not file any objection to controvert the plea of the petitioner. However, the Executing Court dismissed the Execution Petition of the petitioner by way of the impugned order dated 05.04.2019.

3.1 Assailing the aforesaid order dated 05.04.2019, it is contended by Ld. senior counsel that the order shows clear non-application of mind. The Execution Petition has been dismissed primarily on two grounds that no specific relief regarding permanent injunction had been granted to the petitioner/defendant No.17B/counter-claimant in the suit culminating in the decree dated 07.11.2011 and secondly that the petitioner could have filed fresh suit for possession.

3.2 Ld. Senior counsel contends that in the counter-claim, it was specifically pleaded by the petitioner that she is the owner in possession of the suit property and relief had been specifically claimed to restrain the plaintiffs/

respondents herein from interfering in the possession of the suit land and to take forcible possession thereof and that the counter-claim of the petitioner was duly decreed. Simply because the trial Court did not specifically mention about the relief of injunction does not mean that relief of injunction was declined to the petitioner.

3.3 Ld. senior counsel has relied upon ***Kapoor Singh Vs. Om Parkash, AIR 2009 P&H 188*** in order to contend that under Order 21 Rule 32 (5P CPC, the Executing Court can issue prohibitory as well as mandatory injunction in exercise of its power to restore the possession of the property in dispute, where the JDs are found to be liable to do so and that decree-holder is not liable to file a separate suit for seeking possession; and that law is in favour of an interpretation, which would prevent multiplicity of proceedings, rather than the one, which will generate it. Ld. counsel also referred to ***Anand Shukla and othes Vs. Muti Mittal, 2011 (3) PLR 146*** and ***Dilbag Singh and others Vs. Harpal Singh and others, 2020 (1) PLR 601*** to support his contention.

4. Refuting the aforesaid contentions, it is argued by Id. counsel for the respondents/plaintiffs/JDs for the purpose of counter-claim that in the decree dated 07.11.2011, no relief of permanent injunction had been granted in favour of the counter-claimant and that once relief is not specifically granted, it is deemed to have been denied. Ld. counsel further contends that Executing Court in the impugned order has rightly held that decree-holder/petitioner could have filed a separate suit for seeking possession. Defending the impugned order, prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. As perusal of the paper-book would reveal, land in dispute is 55 kanal 10 marla, which was initially owned by Central Government and Laxman s/o Chandgi purchased it vide sale deed dated 26.03.1964. After the death of Laxman, his legal heirs sold 42/45 share i.e. 51 kanal 16 marla to one Aditya Bansal and the possession was delivered to him. Later on, the present petitioner/defendant No.17B purchased the entire suit land measuring 55 kanal 10 marla from Aditya Bansal as well as legal heirs of Laxman. However, the plaintiffs i.e., legal heirs of Laxman brought the Civil Suit seeking decree of declaration to be owner in possession of the suit land. In that suit, counter-claim was filed by defendant No.17B (*now petitioner*)

claiming to be owner in possession of the suit land. Perusal of the counter-claim would reveal that it was specifically claimed by her that she is owner in cultivating possession of the suit land at the spot. Apart from the prayer to the effect that suit of the plaintiffs be dismissed with costs, she specifically claimed the relief to the effect that plaintiffs and proforma defendants be restrained from illegally and forcibly occupying the suit land.

7. It is revealed further that while dismissing the suit of the plaintiffs and decreeing the counter-claim of defendant No.17B, the following relief was granted by Id. Additional Civil Judge (Sr. Division), Loharu in its judgment and decree dated 07.11.2011:

“On the basis of sequence of the findings of the issues above-mentioned, suit fails and the same is hereby dismissed. However, the counter claim of the defendant No.17-B succeeds and the same is hereby decreed, declaring the sale-deed No.982 dated 26.03.1964 and other subsequent mutations sanctioned on its basis, are legal and binding on the rights of the plaintiffs. No order as to costs. Decree-sheet be prepared accordingly. File be consigned to the Record-Room, after due compliance.”

8. The appeal filed by the plaintiffs was dismissed on 23.05.2014 and Id. First Appellate Court specifically observed in para No.30 of the judgment that it is Laxman and after his death his legal heirs and after the transfer of the suit property, it is defendant No.17B, who is recorded to be owner in possession of the suit property and therefore, possession of the plaintiffs could not be presumed over the suit property merely on the basis of police report. Thus, possession of defendant No.17B/counter-claimant was specifically held by the First Appellate Court and holding that trial Court had not committed any error, while dismissing the suit of the plaintiff and decreeing the counter-claim of defendant No.17B, the appeal of the plaintiffs was dismissed.

9. It is revealed further that petitioner/decreed-holder/defendant No.17B was compelled to file an execution petition before Executing Court in December 2011, stating therein that despite decreeing of her counter-claim, the plaintiffs and proforma respondents were bent upon to dispossess her and to take forcible possession of the suit land. She prayed for enforcement of the decree passed in her counter-claim. Objections were filed therein by the JDs to the counter-claim/plaintiffs to the effect that they were in possession and that under

the garb of this execution, the counter-claimant wanted to take possession of the suit land. Following issues were framed in that execution petition: -

- “1. Whether the judgment debtors are in possession of the suit property, as alleged in the objections, if so to what effect? JDW.
2. Whether the decree cannot be executed against the judgment debtors? JDW
3. Whether the objections are not maintainable in the present form? DHW
4. Relief.”

10. After taking evidence produced by the parties, all the three issues were decided against the respondents/judgment debtors/plaintiffs and in favour of the decree-holder/claimant. It was specifically observed by the Executing Court in its order dated 10.09.2013 (*Annexure P-4*) as under: -

“No doubt, the papers are giving reference as to the possession of some persons other than the decree holder, but since the civil Court has specifically decreed the counter claim of the decree holder as to the fact of her possession over the suit property, therefore, this Court is of the view that the judgment debtors have miserably failed to prove their possession over the suit property, as alleged by them in their objections. Even otherwise, it is a settled law that if the possession is obtained forcibly during the course of trial of the suit, even then the decree holder has a right to obtain the possession. On the other hand, by way of his evidence, the decree holder has duly proved the fact that the judgment debtors are trying to interfere into the peaceful possession over the suit property, to which they have got no right, title or interest whatsoever, in view of the judgment and decree dated 07.11.2011.”

11. It is, thus, clear that Executing Court again held the counter-claimant/petitioner to be in possession of the suit property. While allowing the execution, the Executing Court directed the plaintiffs/JDs to respect the enforcement of the judgment and decree dated 07.11.2011. Not only this, it was further made clear that in case any kind of disrespect or any kind of interference in violation of the judgment and decree dated 07.11.2011 is made by the judgment debtors/plaintiffs for the purpose of enforcing the rights of the decree-holder/counter-claimant, which had accrued to her by way of decreeing of her counter-claim of the civil suit, in that eventuality, the Station House officer, Police

Station, Loharu was directed to provide necessary police assistance to decree holder to put restrain on the respondents/judgment debtors/plaintiffs on receiving an application in this regard.

12. Despite the aforesaid order dated 10.09.2013, the respondents/plaintiffs succeeded in taking forcible possession of the suit property on 02.10.2017, when petitioner/DH along with her husband, after harvesting the crops on suit property, had gone to Delhi. She came to know about her forcible dispossession and illegally taking possession of the suit property by the JDs/plaintiffs, when she returned from Delhi. Her request to JDs to vacate the land fell to deaf ears.

13. Unfortunately, the trial Court failed to take into account the aforesaid background facts and dismissed the fresh execution filed by the decree-holder/ counter-claimant by taking the view that trial Court had in its decree dated 07.11.2011 had not specifically relief specific of restraining plaintiffs from interfering in the possession of counter claimants in the suit property or taking forcible possession thereof; and that counter-claimant could have filed the separate suit. The said approach on the part of the Executing Court is absolutely illegal and not sustainable for the following reasons.

14. The contention of Id. counsel for the respondent to the effect that relief of permanent injunction was not specifically granted by the trial Court, has no merit. Rather, the facts and circumstances of the case, as have been noted earlier, would clearly indicate that the relief of injunction was implicit in the decree as passed by the trial Court. These circumstances may again be recapitulated for clarity. In the counter-claim, defendant No.17B/petitioner specifically prayed that plaintiffs/ proforma defendants be restrained from illegally and forcibly occupying the suit land. While dismissing the suit of the plaintiffs and decreeing the counter-claim, the trial Court in its judgment dated 07.11.2011 granted the relief in two parts. In first part, the counter-claim of defendant No.17B was held to succeed and so, the same was decreed. As per the second part, sale deed No.982 dated 26.03.1964 and subsequent mutation sanctioned on its basis were held to be legal and binding on the rights of the plaintiffs. It is, thus, clear that counter-claim of defendant No.17B was decreed, which means whatever relief was claimed by the counter-claimant/defendant No.17B, the same was granted by the Court. Not only this, the First Appellate Court while discussing the matter, specifically found

defendant No.17B to be owner in possession of the suit land and accordingly dismissed the appeal as filed by the plaintiffs.

15. Matter does not stop here. When the Judgment Debtors/ plaintiffs/respondents earlier tried to take forcible possession over the suit land, defendant No.17B was forced to file execution in December 2011. Judgment Debtors/plaintiffs/respondents claimed to be in possession and then, specific issue was framed, as to whether Judgment Debtors/plaintiffs/respondents are in possession of the suit property, as was alleged by them in the objections. Another specific issue was framed as to whether the decree could not be executed against Judgment Debtors/plaintiffs/respondents. Both these issues were decided against the Judgment Debtors/plaintiffs/respondents. It was specifically held by the Executing Court in its order dated 10.09.2013 that the counter-claimants/decreed-holders were in possession over the suit property. It was even observed that as per the settled law, if the possession is obtained forcibly during course of the trial of the suit, then decree-holder has right to obtain the possession. It was further observed that by way of evidence, decree-holder has duly proved the fact that Judgment Debtors/plaintiffs/respondents were trying to interfere in their possession and it was in these circumstances that the Executing Court directed the Judgment Debtors/plaintiffs/respondents to respect the enforcement of the judgment and decree and also gave certain directions to SHO in case there is any resistance on the part of the Judgment Debtors/plaintiffs/respondents, as has already been noticed. Concededly, no appeal/revision was filed by the respondent/JDs against this order dated 10.9.2013 (*Annexure P-4*) of the Executing Court.

16. In the facts and circumstances, it cannot be claimed by the respondents that decree-holders were not in possession of the suit property or that the decree could not be implemented or that the relief of injunction was not implicit in the decree granted by the trial Court.

17. Proceeding further, the contention of respondents or the finding given in the impugned order dated 5.4.2019 that counter-claimant/ DH should have filed separate suit for possession, after being dispossessed, has also no merit. It is necessary to refer to Order XXI Rule 32 CPC, which reads as under: -

“32. Decree for specific performance for restitution of conjugal rights, or for an injunction.— (1) Where the party against whom a decree for the specific

performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforce in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[Explanation.—For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunctions.

18. Under Order 21 Rule 32 (5) CPC to be read with explanation, Court has the power to issue prohibitory as well as mandatory injunction. In the case of **Kapoor Singh (Supra)**, it has been held by this Court that the Act required to be done as mentioned in the explanation to Rule 5 of Order 21 are prohibitory and mandatory injunction and it empowers the Executing Court in case of violation of

the decree of injunction where respondents have forcibly taken possession in respect of the decree of injunction. It was further held by this Court that law lies in favour of interpretation, which would prevent multiplicity of proceedings, rather than the one which will be generate it. The decree-holder is not required to file another suit as he had already obtained a decree in his favour by spending much time and expense. Thus, the Executing Court has jurisdiction to pass an order on the application under Order 21 Rule 32 (5) CPC to restore the possession of the land in dispute to decree-holder in case the decree of injunction is violated by the Judgment Debtor.

19. Similar view was taken by this Court in the case of **Anand Shukla (Supra)**. In that case, it was specifically held by this Court that Judgment Debtors cannot be permitted to take law into their own hands and if the JDs after passing decree, violates the same by dispossessing decree-holder, the Courts are having full power to give effective relief to decree-holder by restoring the possession. It was further held that in view of the explanation added in Rule 5 by way of amendment, it cannot be said that Executing Court have no power to restore the possession to the decree holder under Order 21 Rule 32 CPC.

Similar view was taken in the case of **Dilbag Singh (Supra)**.

20. In view of the aforesaid factual as well as legal position, it is held that the impugned order dated 05.04.2019 passed by the Id. Executing Court cannot be sustained in the eyes of law. The said order is hereby set aside.

21. The Judgment Debtors/plaintiffs/respondents are hereby directed to restore the possession of the property in dispute to the petitioners/decree-holders/counter-claimants/defendant No.17B immediately. The Superintendent of Police of the concerned area will take immediate steps necessary for restoration of the possession of the petitioners/ decree-holders/counter-claimants/ defendant No.17B, in case there is any resistance on the part of the Judgment Debtors/plaintiffs/respondents. Petition is allowed accordingly.

CM-771-CII-2021

22. It will not be out of place to mention that along with this petition, the petitioner/decree-holders/counter-claimant/defendant No.17B had also filed CM-771-CII-2021 under Order 20 Rule 12 read with Section 151 CPC for directing the

Judgment Debtors/plaintiffs/respondents to pay mesne profits to the tune of ₹71,000/- per month along with interest @ 18% per annum for illegally occupying the suit property w.e.f. 02.10.2017 till the date of handing over the possession of the suit land to the petitioner.

23. After giving background facts and the manner in which the petitioner/decreed-holder/counter-claimant/defendant No.17B had been dispossessed by the Judgment Debtors/plaintiffs/respondents, it was submitted that out of the total suit land measuring 55 kanal 10 marla, permanent house/construction was there in 500 sq. yards and that remaining land of 54 kanal 14 marla was under cultivation. For determination of the assessment of the value of the crops cultivated from Kharif 2017 to Kharif 2020, an application was moved by her to Tehsildar Loharu (*copy Annexure P9*) and as per the report dated 13.01.2021, submitted by the Tehsildar (*copy Annexure P10*), it was reported that Kharif crops worth ₹2,87,100/- were cultivated in 2017. The crops worth ₹4,28,800/- in Kharif 2018 and worth ₹4,40,000/- were cultivated in 2019 respectively. Even in Kharif 2020, crops were cultivated, the report of which is not yet available, but at present market value, the same was to the tune of ₹5 lakh approximately. On the basis of average, the petitioner/decreed-holder/counter-claimant/defendant No.17B claimed that respondents were liable to pay mesne profits to the tune of ₹41,666/- (approximately ₹41,000/-) per month on account of the crops cultivated over the suit land. The petitioner annexed necessary documents in this regard as Annexures P11 & P12. It was further pleaded that as pucca house exist over 500 sq. yards of the suit property, the minimum monthly rent which it could fetch is ₹30,000/- per month, as it also consists of two water tanks and tube well. Besides, this entire valuable piece of land is located at a prime location as per the site plan *Ex.PW5/A* of the respondents (*copy Annexure P-13*). A stadium is situated along with the National Highway No.334B, Loharu and that it has a very good approach and location. With these submissions, prayer was made to direct the respondents to pay ₹71,000/- per month along with interest as mesne profits w.e.f. 2.10.2017 i.e. the date of dispossession, till handing over the possession to the petitioner for user and occupation.

24. It is very important to notice that Judgment Debtors/ plaintiffs/ respondents did not file any reply to this application and thus, it is presumed that

they admitted the contents of the application.

25. It has already been found under the earlier discussion that petitioners/decree-holders have been illegally and forcibly dispossessed by the Judgment Debtors/plaintiffs/respondents on 02.10.2017. In these circumstances, petitioners are entitled to be compensated by the respondents by paying the user and occupation charges. Since there is no reply to refute the contentions raised in the application regarding the market value of the crops and the market value of the rent, which the constructed portion would fetch, therefore, this Court grants mesne profits @ ₹70,000/- per month from October 2017 till 31.08.2024, which works out to be ₹58,10,000/- i.e. ₹70,000/- X 83 months. Petitioners are further allowed interest @ 6 % per annum on the said amount w.e.f. October 2017 to August, 2024. It is further made clear that in case the Judgment Debtors/plaintiffs/respondents do not vacate the suit property and handover the same to the petitioners/decree-holders/counter-claimants/defendant No.17B till 31.08.2024, the future mesne profit/user charges w.e.f. 01.09.2024 shall be ₹2 lakh per month. Revision is disposed of accordingly.

05.08.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No