



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.196 of 2016 (O&M)

Date of Order:18.07.2024

M/s Shiv Dei Enterprises

.Appellant

Versus

Udmi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.R.Mahajan, Sr. Advocate, with
Ms. Nikita Goel, Advocate
Mr. Prateek Mahajan, Aadvocate,
for the appellant.

Mr.Vikas Singh, Advocate
Ms. Anamika Sheoran, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. In this execution second appeal, the appellant assails the correctness of the trial court's order dated 19.04.2016, which in appeal has been affirmed by the First Appellate Court on 27.05.2016.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Udmi filed a Civil Suit No.754 of 1981, on 17.07.1981 against Sh. Dharam Pal etc. claiming the following two reliefs:-

*“(i) Permanent injunction restraining the defendants from interfering in the possession of the plaintiff over the land measuring 20 kanals 18 marlas comprised in square No.302 killa No.2/2 (2-14), 3(7-0), 19*8-0), 20/1(3-4) situated in the area of village Ellenabad Tehsil and District Sirsa;*



(ii) *Possession of an area measuring 45 ft into 65 ft in sq. no.302Killa No.2/2 Min (0-11) in the area of village Ellenabad Tehsil and District Sirsa by removal of Malba etc.”*

4. The suit was partly decreed qua the relief of permanent injunction. The operative part of the decree passed by the trial court reads as under:-

“It is ordered that the suit is decreed partly a decree for permanent injunction is passed in favour of the plaintiff and against the defendant no.1 to 12 only in respect of the suit land except the land comprised in sq. no.302/2/2/min., measuring 1 kanal 6 marla which is owned and possessed by defendant no.12 and the land measuring 2 kanals which is comprised in rectangle no.302 killa no.3/7(1-0) and Killa No.3/6(1-0) which in possession by defendant no.1 except these lands which are held to be in possession of defendant no.1 to 12, defendant no.1 are restrained from interfering in the possession of plaintiff over the remaining suit land. The suit is dismissed against defendant no.13 as he is not a juristic person. The parties are left to bear their own cost.”

5. The first appeal filed by Sh. Udmi and the cross appeal filed by the defendants were decided together. The plaintiff's appeal was allowed, whereas the defendants' appeal was dismissed. The Regular Second Appeal



filed by the defendants was dismissed. The suit filed by the plaintiff was finally decreed in totality.

6. On 03.02.1986, Sh. Gurdeep Singh is stated to have exchanged his 7 kanals area with Sh. Udmi and Sh Malkiat Singh. On 13.01.1997, there was a mutual settlement between Sh. Gurdeep Singh and Sh. Udmi while partitioning the land. Out of the suit land comprised in Rect. No.302, the parcel of plot comprised in Khasra No.2/2/1/3, measuring 13 marlas fell to the share of Sh. Gurdeep Singh. It is significant to note that on 03.02.1986, Sh. Gurdeep Singh admitted that he had already received possession of 11 kanals and 11 marlas land which was given in exchange by Sh. Udmi and Sh. Malkiat Singh. Sh. Udmi filed the execution petition. During the pendency of the execution petition on 26.10.2015, Sh. Udmi sworn an affidavit to the effect that he has sold his full share of land comprised in Rect. No.302, Killa No.2/2 to Sh. Rajiv Beniwal by way of registered sale deed on 26.10.2015. Subsequently, he withdrew the execution petition.

7. Sh. Gurdip Singh filed an application for continuation of execution proceedings which was allowed. He claimed to be the assignee of the property. The revision petition filed against the aforesaid order passed by the Executing Court was disposed of with direction to the court to proceed with the execution petition, however, subject to the objections by the Judgment Debtor(s) or the Decree Holder(s). Now the objection petition filed by the petitioner has been dismissed by both the courts below. It is evident that the First Appellate Court has erred in observing that Sh. Udmi made a statement in the Executing Court on 29.10.2015, that he did not want



to continue with the execution proceedings as he has been compensated regarding the possessory rights in respect of 45 feet x 65 feet. In fact, as per the affidavit of Sh. Udmi, he has sold the entire property comprised in this khasra number in favour of Sh. Rajiv Beniwal. Similarly, the First Appellate Court has also erred in observing that the matter in issue has already been decided by the High Court, whereas the High Court in its order dated 22.03.2016, has only upheld the Executing Court's order permitting Sh. Gurdeep Singh to continue with the execution petition.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

9. The elaborate arguments have been addressed by the learned counsel representing the parties with respect to their respective entitlement, however, it is not considered appropriate to go into the entire matter particularly when the case is required to be remitted back to the Executing Court to decide the following two aspects:-

- (i) What is the total area in possession of Sh. Gurdeep Singh out of the land comprised in Rect. No.302, Khasra No.2?;
- (ii) Whether Sh. Gurdeep Singh was ever dispossessed during the pendency of the civil suit from the land comprised in Rect. No.302, Khasra No.2/2 which may enable him to seek possession from the appellant in execution proceedings?

10. As per the writing dated 03.02.1986, Sh. Gurdeep Singh was put in possession of 11 kanals and 11 marlas. As per the partition deed dated 13.01.1997, Sh. Gurdeep Singh was held entitled to only 13

marlas comprised in Khasra No.2/2/1/3 of Rect. No.302. The only claim of Sh. Gurdeep Singh is with respect to 13 marlas land. For that purpose, it is required to be investigated how much area is already in possession of Sh. Gurdeep Singh out of Khasra No.2/2/1/3 in Rect. No.302. With respect to remaining area, Sh. Udmi has already given up his claim while withdrawing the execution petition. Hence, Sh. Gurdeep Singh cannot claim more than what has come to his share in the partition. Both these aspects have not been decided by the courts below.

11. Keeping in view the aforesaid facts and discussion, both the impugned orders are set aside and the Executing Court is requested to decide the matter afresh.

12. With these observations, the appeal is disposed of.

13. The parties through their learned counsel are directed to appear before the Executing Court, on 14.08.2024.

14. All the pending miscellaneous applications, if any, are also disposed of.

July 18, 2024	(ANIL KSHETARPAL)
nt	JUDGE
Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO