



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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(1)

CR-4614-2024

Date of Decision: 14.08.2024

Kewal Krishan and another

....Petitioners

Versus

Jas Rani and others

....Respondents

(2)

CR-4620-2024

Sanjeev Kumar @ Sanjeev Walia and another

....Petitioners

Versus

Jash Rani and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner(s).

VIKAS SURI, J.(Oral)

1. The aforesaid revision petitions under Article 227 of the Constitution of India, both involving common issues and similar grievance having been raised therein, with the consent of learned counsel for the petitioners were heard together and are being disposed of by common judgment. For reference, facts are taken from CR-4614-2024 titled as *Kewal Krishan and another vs. Jas Rani and others*.



2. Briefly stated, petitioners are primarily aggrieved by the stay application preferred by them not being decided despite their appeal having been admitted, which is still pending, while execution proceedings for implementation of the impugned decree are continuing.

3. Learned counsel for the petitioners submits that the petitioners are co-defendants in a partition suit, along with other co-sharers, which stands decreed by passing of final decree of partition vide judgment and decree dated 06.03.2023 (Annexure P-2).

4. Aggrieved by the same, petitioners preferred statutory first appeal challenging the aforesaid judgment and decree, which stands admitted vide order dated 03.04.2023. Along with the appeal, petitioners have moved an application under Order 41 Rule 5 read with Section 151 CPC, seeking stay of operation of the impugned judgment and decree.

5. Notice of the stay application was issued to the respondents. Legal representative of the plaintiff, viz. Gurdarshan Kumar son of the Jas Rani, was on caveat and put in appearance through counsel on the returnable date of notice, i.e. 21.04.2023. Thereafter, the matter was adjourned from time to time for service of remaining respondents. Vide order dated 06.07.2023 passed by the first appellate Court, service of respondent Nos.12 to 109 was dispensed with. It is submitted that the same order records that reply to the application under Order 41 Rule 5 CPC has been filed. It is, however, further submitted that the contesting respondent No. 1(i), legal representative of the deceased plaintiff, has not filed reply to the stay application adopting dilatory



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tactics and on the other hand is actively pursuing to implement the impugned decree.

6. In the meanwhile, plaintiff-respondent No.1(i) filed execution application seeking implementation of the aforesaid impugned judgment and decree. In execution proceedings, vide order dated 13.10.2023 warrants of possession were ordered to be issued. Faced with the said situation, petitioners moved an application dated 12.12.2023 (Annexure P-5) seeking preponement of the hearing of appeal/stay, notice of which was issued to the respondents and at the request of counsel for plaintiff/respondent-caveator, the matter was adjourned to 06.01.2024. Thereafter, the matter was further deferred at the instance of counsel for respondent No.1(i), to be listed along with connected civil appeal, i.e. another appeal preferred by some other co-defendants. It is submitted that the appeals are now pending for 16.08.2024.

7. Learned counsel for the petitioner further submits that in execution proceedings, petitioners sought recalling of warrants of possession. The said application has been dismissed vide order dated 02.08.2024, copy of which was produced for perusal at the time of hearing of these petitions. The said application for recalling warrants of possession stands dismissed on the ground that no stay order has been received from the appellate Court.

8. Learned counsel for the petitioners prays that the petitioners would be satisfied at this stage, in case a direction is issued to the first appellate Court to dispose of the application under Order 41 Rule 5 read with Section 151 CPC in a time bound manner and pending its consideration, warrants of possession are withdrawn or not executed.



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9. Heard learned counsel for the petitioners and perused the record with his able assistance.

10. In the light of peculiar facts and circumstances noticed above, the limited prayer made on behalf of the petitioners is not only equitable but also reasonable on the face of it. Accordingly, to secure ends of justice, the instant petitions are disposed of with a direction to the first appellate Court to expeditiously dispose of the application(s) under Order 41 Rule 5 CPC, filed by the petitioners in the pending civil appeal(s), in accordance with law. Further, warrants of possession ordered to be issued vide order dated 13.10.2023, if not already executed, be kept in abeyance till the decision on the ad interim stay matter, as directed herein above.

11. This order has been passed without issuing notice to the plaintiff-respondent and as such, respondent No.1(i) would be at liberty to file an application seeking its recall.

12. Resultantly, the revisions petitions are disposed of in the aforesaid terms.

August 14, 2024
Varinder

**(VIKAS SURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No