

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

125

CR-36-2024 (O&M)

Date of decision:27.02.2024

Baljeet Singh

... Petitioner

Vs.

Sukhman Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. P.S. Dhaliwal, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed against the order dated 11.10.2023 (Annexure P-3) passed by the Additional Civil Judge (Sr. Division), Barnala, whereby objections filed by the petitioner has been dismissed.
2. The relevant facts which are required for disposal of the present revision petition are that the respondent/decreed holder filed a suit for possession claiming himself to be the owner by virtue of a sale deed No.25 dated 29.03.2004 and further alleging that he was in possession but on 20.05.2013, he had been dispossessed by the respondents/JDs. Earlier the plaintiff had filed suit No.180 dated 06.06.2006 against Major Singh, Kuldeep Singh and Tota Singh and vide judgment and decree dated 12.06.2010 those persons were restrained from dispossessing the plaintiff/decreed holder and from interfering in his possession. In this case defendants were proceeded against ex-parte and the suit was ex-parte decreed in favour of the decreed holder vide judgment and decree dated 28.02.2017 and the defendants were directed to immediately hand over the possession of the suit property to the plaintiff, failing which, the plaintiff could obtain possession through Court and the defendants were restrained from

interfering in the suit property in any manner.

3. The decree holder filed execution for executing the judgment and decree dated 28.02.2017 for seeking possession of the suit property. When it came to the notice of the petitioner, then he filed third party objections to the execution filed by the decree holder/respondent. The reply to the said objections was filed by the decree holder. The Executing Court dismissed the objections of the petitioner vide the impugned order dated 11.10.2023. Hence feeling aggrieved of the said order, the petitioner knocked the doors of this Court by way of filing the present revision petition.

4. It has been contended by learned counsel for the petitioner that the total land is 94 kanals and 16 marlas which is still joint and has not been partitioned. So when the land has not been partitioned, then any person, who had purchased specific numbers by way of sale will only deemed to be a co-sharer. He has further contended that the Executing Court has failed to consider this fact that it had not been established that the plaintiff was in exclusive possession of the suit land. So without partition, he cannot claim specific portion of land and in this context, has placed reliance upon a decision of this Court rendered in **Bhartu Vs. Ram Sarup, 1981 PLJ 204**. He has argued that as such the objections filed by the revision petitioner have been wrongly and illegally dismissed by the Executing Court.

5. The revision petitioner had filed the objections in the present execution claiming himself to be a co-sharer in the joint land and asserted that the decree holder being co-sharer in the joint land is entitled to symbolic possession only and was not entitled to physical possession of the specific khasra numbers.

6. Perusal of the judgment dated 28.02.2017 shows that the civil suit for possession filed by the plaintiff/decreed holder was decreed by accepting the

Pal Kaur and Tota Singh (the defendants in the said case). Suit of the plaintiff was decreed with the directions to the defendants to immediately hand over the possession of the suit property to the plaintiff, failing which, plaintiff could obtain possession through Court and thereafter defendants were restrained from interfering in the suit property in any manner.

7. The application filed by JDs under Order 9 Rule 13 CPC for setting aside the aforesaid ex-parte decree was dismissed vide order dated 11.10.2022. Earlier similar objections were filed by the L.Rs of deceased Tota Singh/JD which were also dismissed. So it has been rightly observed by the Executing Court that the decree holder was not seeking possession on the basis of co-ownership but on the strength of judgment and decree dated 28.02.2017 vide which the decree for possession had been granted in favour of the plaintiff by accepting his case that he had been dispossessed by the defendants. So the case law that has been cited by the counsel is of no help to him being not applicable to the facts of the case in hand.

8. In the light of the above, the impugned order is a well reasoned order and does not suffer from any illegality or perversity and required no interference.

9. So, this revision petition being bereft of any merits stands dismissed.

10. All pending application(s), if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

27.02.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |