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Chanderwati v. Rajinder Kumar Arjun Singh, (2023-1)209 PLR 774; 2023 PLRonline 485657

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

CHANDERWATI and another – Petitioners,

Versus

M/S. RAJINDER KUMAR ARJUN SINGH and others – Respondents.

CR-309-2021(O&M)

Execution – Merely because the defendants have preferred an appeal before this Court does not mean that the judgment and decree passed by the trial Court is not to be executed and the proceedings are to come to a standstill.

[Para 8]

Cases referred to:-

1. (2003-3)126 PLR 653, *Kashmir Singh v. Tana*.

Mr.A.K. Khubbar, for the petitioners. *Mr.Parminder Singh*, for respondents No.1 and 2.

H.S. Madaan, J. – (1st December, 2022) –

1. Under challenge in this revision petition are two separate orders dated 12.3.2020 Annexure P3 and Annexure P4, order Annexure P5 dated 1.2.2021 passed by Civil Judge (Sr.Divn.), Kurukshetra in Execution Petition No.16 of 2019 as well as warrants of possession dated 3.2.2021 issued by the said Court.

2. Briefly stated, facts of the case are that a Civil Suit No.456 of 2013 for declaration, possession with consequential relief of permanent injunction filed by plaintiffs M/s Rajinder Kumar Arjun Singh, Commission Agent, Ladwa, Tehsil Thanesar, District Kurukshetra through its partner Ram Narayan, resident of Ladwa, Tehsil Thanesar, District Kurukshetra and said Ram Narayan against the defendants Rajinder Kumar, resident of Niwarsi, now resident of House No.2190, Sector 32, Urban Estate, Ludhiana, Smt.Chanderwati wife of

Sadhu Singh and Kamlesh Kaur wife of Sarup Singh, both residents of village Sonti, Tehsil Thanesar, District Kurukshetra was decreed with costs by Civil Judge (Sr.Divn.), Kurukshetra vide judgment and decree dated 31.1.2015 resultantly sale deed bearing No.8495/1 dated 5.12.2006 was declared as illegal, null and void and was set aside along with mutation No.746 sanctioned on the basis of that sale deed and a decree for possession with consequential relief of permanent injunction was passed in favour of the plaintiffs by restraining defendants No.2 and 3 from alienating, transferring, mortgaging the suit land to any other person or from changing the nature of the suit land in any manner.

3. That judgment and decree were challenged by the defendants by filing an appeal before learned District Judge, Kurukshetra, which was assigned to learned Additional District Judge, Kurukshetra, who vide judgment and decree dated 19.9.2018 dismissed the said appeal. The decree holders then filed an execution application before the Court of Civil Judge (Sr.Divn.), Kurukshetra craving for issuance of directions to the defendants to comply with the judgment and decree and to hand over the vacant possession of the suit property to the plaintiffs and cost of the suit and execution be got paid to the plaintiffs/decreed holders from the defendants/JDs.

4. Notice of the execution application was given to defendants/JDs No.2 and 3, who had put in appearance through counsel, whereas issuance of notice to defendant/JD No.1 was dispensed with for the reason that sale deed executed by such JD had been set aside. Defendants/JDs No.2 and 3 had not filed any objections despite the case having been adjourned several times, as such vide order 12.3.2020 (Annexure P3), the Executing Court directed issuance of warrants of possession qua the suit property against JDs No.2 and 3 for 30.3.2020. The concerned SHO was directed to provide sufficient police help to the executing official.

5. Another order passed on that very i.e. on 12.3.2020 vide which the objection raised by JDs No.2 and 3 that they had preferred RSA No.1744 of 2019 in Punjab & Haryana High Court, which was pending and application for grant of stay was under consideration, therefore, the Court was legally bound to wait for a decision of the RSA. That objection was contested on behalf of the decree-holders submitting that since no stay order had been passed by the Appellate Court, the proceedings could not be stayed; furthermore, the judgment and decree passed by the trial Court had been upheld by the First Appellate Court with no stay order having been passed by the High Court. The Executing Court vide order dated 12.3.2020 observing that mere pendency of an appeal before the High Court does not amount to automatic stay of execution application and that the Executing Court cannot go beyond the decree, rejected that objection. Since the warrants of possession dated 3.2.2021 could not be executed, those were ordered to be executed with police help, leaving the JDs No.2 and 3 aggrieved and they have preferred the present revision petition.

6. Notice of the revision petition was given to respondents/decreed holders and they have put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that the revision petition is absolutely without merit.

8. The plaintiffs have succeeded in the trial Court despite vehement contest offered by the defendants and first appeal filed by the defendants against the judgment and decree passed by the trial Court had been dismissed. Merely because the defendants have preferred an appeal before this Court does not mean that the judgment and decree passed by the trial Court is not to be executed and the proceedings are to come to a standstill. The litigant has to wait for a long time to get his dispute adjudicated upon by the Courts and if the litigant is successful and a decree is passed in his favour, he gets actual relief when the decree is executed otherwise the decree-sheet is just a piece of paper. If a wily litigant exploiting the technicalities and loopholes in the procedure is successful in prolonging the execution of the decree, that would rather result in failure of the justice causing anguish and frustration to a litigant, who pursues the matter for years and years and when wait for actual justice becomes endless. Designs of such type of people to stretch the proceedings to the extent possibly cannot be allowed to succeed, rather every effort is to be made to dispense justice to a litigant promptly and expeditiously.

9. I find the orders passed by the Executing Court to be legal and valid without any element of arbitrariness or violative of any legal provision.

10. Learned counsel for the revisionists while relying upon judgment *Kashmir Singh v. Tana and others*, ¹ (2003-3)126 PLR 653 by a Single Judge of this Court has submitted that the decree passed in this case is for possession of share in the joint property and only joint possession can be given to the decree-holders. This submission by learned counsel for the revisionists is to be taken into view by the Executing Court while getting the decree executed.

11. There is absolutely no scope for interference with the orders passed by the Executing Court, which are detailed and well reasoned.

12. Thus, finding no merit in the civil revision petition, the same stands dismissed.

R.M.S.
dismissed.

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Petition