

(2011) 04 P&amp;H CK 0073

**High Court Of Punjab And Haryana At Chandigarh****Case No:** ESA No. 33 of 2010 (O and M)

Tarachand and Another

APPELLANT

Vs

Ramnath and Another

RESPONDENT

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**Date of Decision:** April 4, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 97, 151

**Hon'ble Judges:** L.N. Mittal, J**Bench:** Single Bench**Final Decision:** Allowed

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**Judgement**

L.N. Mittal, J.

Tarachand and Satyapal-objectors have filed the instant execution second appeal, having failed in both the Courts below.

2. Suit filed by Respondent No. 1-Ramnath-decree-holder (DH) against Respondent No. 2-Sheochand-judgment debtor (JD) for possession of 8 kanals land in suit of killa No. 36//18 by specific performance of agreement to sell entered into by judgment debtor with decree-holder stands decreed and the decree has attained finality. Accordingly, Respondent No. 1 filed execution petition against Respondent No. 2. Sale deed of the suit land has already been executed on behalf of Respondent No. 2 in favour of Respondent No. 1. Executing Court ordered issuance of warrant of possession of the suit land. Appellants herein filed objections under Order 21 Rule 97 read with Section 151 of the CPC (in short, CPC) alleging that objectors are co sharers in the joint land measuring 120 kanals 11 marlas including the suit land measuring 8 kanals along with Respondent No. 2-JD, who was not in exclusive possession of the suit land and, therefore, DH cannot obtain actual possession of the suit land in execution of the decree.

3. Decree-holder resisted the aforesaid objections and inter alia pleaded that the joint land had been partitioned among co sharers long ago and Respondent No.

2-JD was exclusive owner in possession of the suit land.

4. Learned Executing Court i.e learned Additional Civil Judge (Senior Division), Narnaul vide impugned order dated 22.09.2009 dismissed the objections filed by the Appellants herein. First appeal preferred by the objectors has also been dismissed by learned Additional District Judge, Narnaul vide impugned judgment dated 01.09.2010. Feeling aggrieved, objectors has filed the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the Appellants vehemently contended that Appellants and Respondent No. 2-JD (who are all three brothers) are joint owners in joint possession of the entire joint land measuring 120 kanals 11 marlas including the suit land measuring 8 kanals and, therefore, Respondent No. 2-JD could not sell the suit land of specific killa number and Respondent No. 1-DH is not entitled to actual possession of the suit land in execution of the decree to which Appellants were not party.

7. Per contra, learned Counsel for Respondent No. 1-DH contended that the joint land stood partitioned and even the objectors/Appellants themselves pleaded that they are in possession of the suit land to the extent of 2/3rd share, depicting partition of the joint land.

8. I have carefully considered the rival contentions. There is not even an iota of material on record to depict that any partition of joint land had taken place among the three brothers i.e Appellants and Respondent No. 2. The objectors/Appellants pleaded that they are in possession of the suit land along with other joint land to the extent of their 2/3rd share. This plea by no stretch would mean that any partition had taken place. The objectors claimed their 2/3rd share in the joint land. It is categorical plea of the objectors that the joint land had not yet been partitioned and all the three brothers i.e Appellants and Respondent No. 2 are joint owners in joint possession of the entire joint land including the suit land. Appellants were neither party to the impugned agreement nor were they party to the decree passed in the suit filed by Respondent No. 1 against Respondent No. 2. Consequently, Appellants are not bound by the impugned agreement or by the decree passed on the basis thereof.

9. When Respondent No. 2-JD himself was not in the exclusive possession of the suit land, the question of delivering actual physical possession thereof to Respondent No. 1-DH in execution of the decree would not arise as it would violate the rights of the Appellants, who are co sharers in joint possession of the suit land and other land.

10. Even jamabandi for 1998-99 reveals that all the three brothers i.e Appellants and Respondent No. 2 are joint owners in joint possession of the suit land and other joint land. Even according to DH (Respondent No. 1), the JD (Respondent No. 2)

agreed to sell 8 kanals land of killa No. 36//18 being 160/2411 share of 120 kanals 11 marlas land, depicting that the said land is still joint land and the DH by purchasing share to the extent of 8 kanals land has become co sharer in the total joint land to that extent.

11. For the reasons aforesaid, I find that in execution of decree, Respondent No. 1-DH is not entitled to get actual physical possession of the suit land measuring 8 kanals. Approach of the Courts below in dismissing the objections of the Appellants herein is patently perverse, illegal and unsustainable. On the contrary, Respondent No. 1-DH is entitled to only symbolic possession to the extent of share measuring 8 kanals out of the share of Respondent No. 2-JD in the total joint land. Accordingly, impugned orders of the Courts below are set aside. Objections filed by the Appellants are allowed. Respondent No. 1-DH shall be delivered only symbolic possession as co sharer to the extent of 8 kanals land in the joint land out of the share of Respondent No. 2-JD.