

(2000) 04 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5224 of 1999

Suresh Kumar

APPELLANT

Vs

Niranjan Singh

RESPONDENT

Date of Decision: April 26, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2001) 1 CivCC 509 : (2000) 126 PLR 527 : (2000) 4 RCR(Civil) 140

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: M.S. Jain and Adarsh Jain, for the Appellant; Ashok Singhla, for the Respondent

Judgement

M.L. Singhal, J.

This revision is directed against the order dated 4.10.99 passed by Civil Judge, Junior Division, Patiala whereby she dismissed the objections filed by Suresh Kumar objector in execution petitioner (Niranjan Singh v. Ajit Singh (Execution petition No. 197/2.4.1994).

Facts.

2. Niranjan Singh filed suit for possession through redemption quo house No. 5919, which was decreed by Subordinate Judge 3rd Class, Patiala on 2.3.94. In the decree drawn up by the Court. House No. 5919 was shown bounded as follows:-

East: Street

West: House of Balbir Singh

North: Plaintiff

South: Plaintiff

Situated near Lohari Gate, Patiala

Plaintiff put in execution petition for executing the redemption decree. Warrant of possession was issued.

3. One Suresh Kumar put in objections against executing the said warrant of possession. It is alleged by him that he and his family are and prior to him his mother and father had been residing in the aforesaid house from the very beginning i.e. for the last about 45 years i.e. when they shifted from village Barbala, Tehsil Ambala to this house located at Lahori Gate, Patiala. His parents made the said house habitable. After the death of his father, he made improvements in this house. He made it pacca and got sewerage and water supply connection. It is further alleged that his possession and prior to him, the possession of his parents had been continuous, adverse and open. On 3.5.94, Bailiff came to this house with warrant of possession in respect of house No. 5919. In the warrant, the bailiff was directed to deliver possession by breaking open the lock. Warrant of possession could not be executed because he and his family told the Bailiff that they were not party to any litigation in which this decree might have been passed and further this decree was not directed against the house they were occupying and the Bailiff should not take possession of the house they were occupying. Thereupon, the Bailiff went back without executing that warrant of possession. It is further alleged in these objections that on going through the record of the Court, it transpired that one Niranjan Singh had obtained decree for possession through redemption against one Ajit Singh. Alleged decree was the result of fraud. It could not be executed against the objector as he was not party to any such litigation. Decree holder deliberately concealed the fact that he (objector) and his family were residing in this house. It is further alleged that the Bailiff had made a wrong report that the house was found locked. In fact, the house never remained locked as his family was in continuous occupation of this house. While filing suit in court, the description of the property given in the mortgage deed was departed from house in occupation of the objector bears municipal No. B-27/180 Lahori Gate, Patiala. In nutshell the objection to the execution of this decree by Suresh Kumar was that this decree relates to house No. 5919 near Lohori Gate, Patiala, while the house in his occupation is house No. B-27/180 to which this redemption decree does not relate. Boundaries of the two houses differ.

4. These objections were contested by Naranjan Singh decree-holder urging that objector had no right to put in these objections. Objections had been filed to stall the redemption decree. Objector might be in possession of the house as a licensee of Ajit Singh and as, such he was liable to deliver back the possession of the house to the decree-holder and he could not resist the execution of the warrant of possession.

5. On the pleadings of the parties, the following issue was framed by the Execution Court:

1. Whether the objector is in possession of the property in his own right and decree in redemption dated 2.3.94 is not binding on him? OP Objector.

6. Civil Judge, Junior Division, Patiala dismissed these objections. In view of her findings, that the objector had failed to prove that the house, which is the share decreed is different from house, which is in his occupation.

7. I have heard the learned counsel for the parties and have gone through the record.

8. Redemption decree relates to house No. 5919 bounded as follows:-

East: Street

West: House of Balbir Singh

North: Plaintiff

South: plaintiff

9. In the mortgage deed, house No. 5919 situated in the abadi of Lahori Gage, Patiala is shown bounded as follows:

East: Owner

West: House of owner

North: House of Balbir Singh

South: Gali

10. Learned counsel for the petitioner objector submitted that the decree relates to house No. 5919 bounded as follows:

East: Street

West: House of Balbir Singh North: Plaintiff

Sough: Plaintiff

While the house marked with the following boundaries:

East: Owner

West: House of owner

North: House of Balbir Singh

Sough: Gali

is shown in the mortgage deed.

11. It was submitted by the learned counsel for the petitioner objector that petitioner objector is in possession of house No. B-27/180 in his own right and he is

not claiming any right through the mortgagee JD. It was further submitted that the redemption suit was not filed with regard to this house. Redemption decree does not relate to this house. It was submitted by learned counsel for the petitioner that the mortgage deed is dated 20.2.73 while the petitioner was in occupation of this house since before 20.2.73 and prior to him, his father was in occupation of this house. Petitioner's marriage was performed in 1976 in this house. Petitioner is employed in Punjab State Electricity Board. One Tarsem Lal Singhla DW4 stated that he attended the marriage of the petitioner. Which was performed in November 1976 in this house. Punjab State Electricity Board employees are given free electricity upto certain units and concession given is noted on the bills issued to them. Suresh Kumar objector is also getting concession in electricity consumption while residing in this house. Om Parkash DW3 stated that his house is situated in front of the house of objector Suresh Kumar. Om Parkash came to reside in this Mohalla since December 1980, He has been on visiting terms with Suresh Kumar being his neighbour. He was never seen Niranjan Singh or Ajit Singh in the house in dispute since after the year 1980. Dayal Dass stated that he was called to this house in the year 1969 for repairing some doors by Suresh Kumar's father Lachhman Dass. They had been residing in this house prior to 1969. Lachhman Dass died in 1970. He attended his cremation. Suresh Kumar's marriage was performed in this house, Which he attended. He had never seen Niranjan Singh or Ajit Singh residing or coming to this house. Shri Bhag Singh Senior Clerk, Municipal Committee, Patiala DW1 stated that water supply account No. 1856 SI/10 relates to Suresh Kumar son of Lachhman Dass B 27/180 Lahori Gate, Patiala. On 28.2.86 security amount of Rs. 20/- was deposited. It was submitted by the learned counsel for the objector petitioner that house No. B-27/180 which is in occupation of the petitioner in his own right, is not one to which redemption decree relates. Before warrant of possession could be allowed to be executed, the Court was requested to satisfy itself whether boundaries of the "house against which warrant of possession was being directed tallied with the boundaries mentioned in the redemption decree/mortgage deed. It was submitted that the objections were not false and frivolous. They required serious consideration by the Court.

12. In this case, the Executing Court had made no effort to find out whether the redemption decree relates to house No. B-27/180 which is said to be in occupation of the objector. If the house, to which the redemption decree relates, is found to be, no other than house No. B27/180 Lahori Gate, Patiala, the objector shall not be allowed to resist the execution of the decree because the objector has specifically stated in his objections that he is in possession of house No. B 27/180 which is not house covered by redemption decree in his own right for executing redemption decree, the executing court is required to determine whether the redemption decree relates to the same house as is claimed to be in possession of Suresh Kumar objector and his family.

13. Faced with this position, learned counsel for the respondent decree holder submitted that against the dismissal of objections, the remedy of objector was not revision but appeal. Suffice it to say, against this order, revision lay because the objector's allegation was that he was no party to the decree but was coming in his own right to thwart the execution of warrant of possession. If resistance to the execution of warrant of possession was lay JD or by some body coming through him, the remedy was to file objections under Order 21 Rule 97 CPC or Order 21 Rule 99 CPC. Order passed under Order 21 Rule 97 CPC is appealable. Similarly, order passed under Order 21 Rule 99 CPC is appealable. In this case, however, the objector is claiming to be in possession in his own right and, therefore, if he resisted the delivery of possession and he failed before the executing Court, his remedy was revision. It was held in [Gopalji Prasad Keshari Vs. Md. Rayez alias Fulan and Others etc.](#) that in execution of decree of possession if third party complains claiming interest to the property, order passed on that complaint does not fall under order 21 Rule 103 CPC. Revision is maintainable." In [Chouthmal Vs. Sunderlal and Others](#), it was held that tenants, who were not parties to decree filing objections, adjudication of their claims and evidence recorded order does not thereby become one in terms of Rule 98. Appeal filed against order by tenants is not maintainable." In [Inder Singh Vs. Piara Singh and another](#), it was held that a person in possession of the property who establish that he is not bound by decree sought to be executed is entitled to protect his right i.e. retention of his possession through process of Court. Person who establishes that he is not bound by decree passed against any other person cannot be dispossessed in execution of that decree. Executing Court is bound to consider application of a person in possession, where he was not a party to the decree before he is dispossessed." In [Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another](#), it was observed that "a mere look at the aforesaid provision shows that warrant for possession can be straightway sought against persons occupying immovable property which is subject matter of decree by the decree-holder provided such persons who are occupying the suit property are judgment debtors or persons claiming through the former. We are concerned with the situation in which the appellant resisted the execution proceedings on the ground that he was a stranger to the decree and claimed an independent interest in the suit immovable property possession of which was decreed in favour of respondent No. 1 decree holder. The Nazir in his report dated 28th April 1992 has noted that the warrant for possession could not be executed on spot on account of resistance and objections offered by the appellant amongst others. Application moved by the respondent decree holder on 6th May 1992 was necessarily to be one falling within the scope and ambit of Order 21 Rule 97 CPC. The resistance or objection to possession of immovable property as contemplated by Order 21 Rule 97 CPC could have been offered by any person. The words any person as contemplated by Order 21 Rule 97 sub; Rule (1) were held to be comprehensive enough to include judgment debtor and any person claiming through him and even person claiming independently who would be total strangers to the decree."

Impugned order was not appealable under Order 21 Rule 103 CPC. This order was rather revisable u/s 115 CPC.

14. In the result, the impugned order is set aside and the case is remanded to the Executing Court with a view to its determining whether the redemption decree relates to the house in occupation of Suresh Kumar objector. If Executing Court finds that the redemption decree relates to this house, it will have no hesitation in executing this warrant of possession and throwing out Suresh Kumar objector of this house.

15. Revision disposed of.