

(1993) 07 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1759 of 1991

Sant Singh and Others

APPELLANT

Vs

Narinder Parkash

RESPONDENT

Date of Decision: July 13, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 35, 115 , 151

Citation: (1994) 107 PLR 73

Hon'ble Judges: S.S. Sodhi, J

Bench: Single Bench

Advocate: J.C. Verma and Dinesh Kumar, for the Appellant; U.S. Sawhney, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.K. Jhanji, J.

A decree for possession of land was passed in favour of the decree-holder. The judgment debtors had constructed some houses thereon. In execution of this decree, the decree-holder was delivered possession of the agricultural land and a report to this effect was accordingly made. There was, however, no delivery of possession of the houses constructed on this land nor, indeed was, there any mention with regard to them, in the report regarding delivery of possession of the land in suit.

2. The application of the decree-holder for possession of the houses constructed by the judgment-debtors on the land in suit is now sought to be resisted on the ground that the execution stood satisfied by the delivery of possession of land in suit and the Executing Court had thereby become functus officio. This is a contention that cannot, indeed, be sustained.

3. The case of the judgment-debtors was sought to be supported by the rationale of the Supreme Court in [Shew Bux Mohata and Others Vs. Bengal Breweries Ltd. and Others](#), where it was observed "it is open to the decree-holder to accept delivery of possession under that rule (i.e Order 21 Rule 35 of the Code of Civil Procedure) without actual removal of the person in possession. If he does that, then he cannot later say that he has not been given the possession which he was entitled under the law."

4. A reading of Shew Bux's case (supra) would, however, show that these observations were made in the context of (he arrangement arrived at between the decree-holder and the judgment debtor, in terms of which the judgment-debtor was allowed to continue in possession. Such is not the case here and this judicial precedent is, therefore, clearly of no avail to the petitioner.

5. The impugned order of the Executing Court, thus, warrants no interference in revision Dismissed. There will, however, be no order as to costs.