

(1980) 01 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No 1616 of 1979

Makhan Singh and others

APPELLANT

Vs

Tara Singh and others

RESPONDENT

Date of Decision: Jan. 18, 1980

Hon'ble Judges: D.S. Tewaila, J

Bench: Single Bench

Advocate: H.L. Sarin and Mr. R.L. Satin, for the Appellant; J.S. Shahpuri, for the Respondent

Final Decision: Allowed

Judgement

D.S. Tewatia, J.

The Petitioner-decree-holder obtained a decree for specific performance of contract of sale and in pursuance of the decree requisite amount representing the sale price was got paid to the judgment debtor within the specified time and sale deed was got executed and registered through Court on 21st March, 1978. On 23rd September, 1978 the Petitioner decree holder took cut execution of the decree for getting the possession of the land in question on the strength of the warrant of possession to be issued by the executing Court. The executing Court dismissed the application holding that neither in the judgment nor in the decree the relief regarding possession having been given, the executing Court could not go behind the decree and give a relief which had not been granted in the suit it also was of the view that since the decree had once been consigned as having been satisfied after the sale deed was got executed and registered, so, in fact, nothing remained to be executed and, therefore, the application was misconceived

2. In the plaint, the Petitioner decree-holder as Plaintiff had sought the relief of specific performance of the contract and to be put into possession of the land which was the subject matter of the suit. However, it is no doubt true that the Court while decreeing the suit for specific performance merely directed the payment of the balance of sale price and the execution and registration of the sale deed ; but gave

no further direction regarding the plaintiff being put into possession of the land thereafter

3 The learned Counsel for the Petitioner, Mr. H L. Sarin, referred to me one Division Bench decision of the Patna High Court reported in Sri Sri Janardan Kishore Lal Singh Deo and Another Vs. Girdhari Lal Sunda, , One Division Bench decision of the Allahabad High Court reported in Pt. Balmukand Vs. Veer Chand, . ; and the other of Single Bench in Gyasa Vs. Smt. Risalo, . Wherein on facts, which are on all tours with the facts of the present case, the view taken was that a decree for specific performance includes a relief of possession even when neither in the judgment nor in the decree a specific direction to put the decree-holder in possession is given. I am in respectful agreement with the view enunciated in the said decisions.

4. As for the other ground on which the rejection of the application had been based by the executing Court, it may be observed that, in fact, decree had not been satisfied when it was consigned and, therefore, it was open to the decree holder to make yes another application to the executing Court requesting it to do the needful, therefore, the application was rightly made and the executing Court failed to exercise its Jurisdiction in not executing the said application and putting the decree-holder in possession of the land in question.

5. For the reasons mentioned, this petition is allowed and the order of the executing Court dated 27th February,1979 is set aside and the executing Court is directed to proceed in accordance with law. No costs.

6. Parties through their counsel are directed to appear before the executing court or 8th February 1980. The record of the case be forthwith transmitted to the executing Court.

H. L. S. Petition allowed.