

(1984) 01 P&H CK 0065

High Court Of Punjab And Haryana At Chandigarh

Case No: Execution Second Appeal No. 1746 of 1983

Attra

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision: Jan. 25, 1984

Citation: (1985) ILR (P&H) 308 : (1985) PLJ 9 : (1985) RRR 550

Hon'ble Judges: J.V.Gupta, J

Advocate: M.M.S. Bedi, Advocate, H.L. Sarin, Senior Advocate,, Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. The appellant Attra filed a suit for possession by way of redemption of the suit land. The suit was decreed by the trial Court on 5th February, 1970. In execution of the said decree, the plaintiff appellant got possession of the land on 1st July, 1970. Ram Singh, defendantrespondent, filed appeal against the decree of the trial Court, which was accepted by the lower appellate Court, on 24th February, 1972, thus the decree of the trial Court was set aside and the plaintiff's suit was dismissed. Aggrieved with the judgment of the lower appellate Court, the plaintiff filed a regular second appeal in this Court in which on 12th July, 1972, an interim order staying dispossession of the plaintiff was passed. However, the said regular second appeal was ultimately dismissed on 12th March, 1982. After the dismissal of the appeal by the High Court, Ram Singh defendant filed an application for restitution of the possession on 7th July, 1982, which was taken from him by the plaintiff in execution of the trial Court decree on 1st July, 1970. This application was opposed on behalf of the appellant on the ground that it was barred by time, as the same was not filed within three years from the date of dispossession, i.e., 1st July, 1970. The Executing Court found that the application for restitution is within three years from the date of judgment and decree dated 12th March, 1982, passed by the High Court, since the proceedings remained pending in the High Court prior to this date. Consequently the objection filed on behalf of the appellant were dismissed . In

appeal the learned District Judge affirmed the said finding of the Executive Court. Dissatisfied with the same the plaintiffappellant Attra has filed this second execution appeal in this Court.

2. Learned counsel for the appellant contended that the limitation for restitution is three years, which is to be taken from the date when the defendant was dispossessed, i.e., 1st July, 1970 and since the application was moved on 7th July, 1982, it was clearly barred by time. In support of his contention he referred to *Gurbachan Singh v. Balwant Singh and others*, 1978 PLJ 364. On the other hand learned counsel for the respondents submitted that an application under section 144 of the Code of Civil Procedure for restitution is an application for execution of a decree and, therefore, such application is governed by Article 136 of the Limitation Act, 1963 and not by Article 137, which is a residuary Article. In support of this contention he referred to *Mahijibhai Mohanbhai Barot v. Patel Manibhai Gokalbhai*, AIR 1965 Supreme Court 1477.

3. In view of the Supreme Court judgment referred to above it cannot be successfully argued that the application under Section 144 of the Code of Civil Procedure for restitution was not within time. Application for restitution being an application for execution, the limitation is twelve years and admittedly the application was filed within 12 years from the date when the appeal was accepted by the first appellate Court on 24th February, 1972 against the decree of the trial Court dated 5th February, 1970, in pursuance of which the possession was taken on 1st July, 1970. In any case, in the present case the High Court had stayed the dispossession of the plaintiff appellant and on that ground also there was no occasion for Ram Singh defendant to move application for restitution unless the said regular second appeal was decided on 2nd March, 1982. Thus viewed from any angle the application for restitution was within time and it has been rightly held by both the Courts below. The judgment relied upon by the learned counsel for the appellant cannot be said to be a good law in view of the Supreme Court judgment referred to above. In any case the said judgment is distinguishable on facts as well.

4. Consequently the appeal fails and is dismissed with costs.