

Gaje Singh Vs Smt. Naresho

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 5, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 11

Hon'ble Judges: Arvind Kumar, J

Bench: Single Bench

Advocate: V.K. Gupta, for the Appellant; S.S. Dinarpur, for the Respondent

Final Decision: Dismissed

Judgement

Arvind Kumar, J.

The Petitioners, who are judgment-debtors before the executing court below are aggrieved with the order dated

10.4.2007 passed by the executing court below, by dint of which their application for staying the execution proceedings initiated by Respondents-

decree-holder, has been dismissed.

2. Few facts necessary for the disposal of instant revision petition be noticed first.

3. The Respondent-decree-holder-Plaintiffs filed a suit against the Petitioner judgment debtor-Defendants for possession of 5 kanal 1-1/2 marlas

of land, by way of pre-emption. That suit was decreed on 31.8.1994 to the extent of land measuring 5 kanals, subject to deposit of amount of sale

consideration, miscellaneous expenses etc. Thereafter, the Defendants preferred an appeal before the appellate court below which was accepted

vide judgment dated 5.12.1996. Dissatisfied with the same, the Plaintiff preferred a regular second appeal before this Court and the same was

disposed of on 6.1.2006 and the matter was remanded back to the appellate court below for decision afresh. Pursuant to that order passed by this

Court, the appellate court below vide judgment dated 6.9.2006 dismissed the appeal of the Defendants and directed the Plaintiffs to deposit the

necessary amount of sale consideration etc., which were accordingly decided by the Plaintiffs. Thereafter, the Plaintiff-decree holders filed an

application under Order 21 Rule 11 CPC for execution of the decree and the executing court below issued warrants of possession of land of

judgment debtor and accordingly the possession of the suit property was delivered to the decree-holders on 22.1.2007 and Roznamcha No. 291

and mutation No. 383 dated 22.1.2007 were duly entered. In the meantime, a regular second appeal was preferred by the Defendants against the

judgment dated 6.9.2006 rendered by the appellate court below and this Court vide order dated 23.1.2007 while admitting the appeal of the

Defendants stayed the execution of decree, provided the same was not executed by that date. Thus, the J Ds while relying upon the order passed

by this Court, as aforesaid, filed an application for stay of the execution proceedings, while has been dismissed by the executing court below vide

the impugned order dated 10.4.2007. Hence this revision petition.

4. I have heard learned Counsel for the parties and have also gone through the paper-book carefully.

5. It is apparent from the record that the executing court below vide order dated 2.11.2006 issued warrants of possession against the property of

judgment debtor-Petitioners for 6.1.2007, on which date, the J Ds filed an application for recalling of order dated 2.11.2006 by virtue of which

warrants of possession were ordered to be issued on the ground that they have preferred an appeal before this Court. However, no stay order

was shown and the notice of the application was ordered to be issued for 17.2.2007. In the meantime, in compliance of the orders passed by the

executing court below in respect of warrants of possession of the property of JD, the revenue authorities visited the spot on 12.1.2007 and since it

was found that wheat crop has been sown thereon by Gaje Singh etc. (Petitioners), while assessing the amount of compensation as Rs. 3000/- in

respect of the crop standing, the warrants of possession was returned to the executing court below. This led the decree- holders to file an

application for deposit of compensation amount, as assessed by the revenue authorities in respect of the standing crop on the suit land and

accordingly they deposited the aforesaid compensation amount and moved another application for issuance of warrants of possession.

Accordingly, the executing court below issued the warrants of possession for 17.2.2007, which was the date already fixed in the case. Besides, the

executing court below also granted liberty to the J Ds to show stay order, if any operating in respect of execution proceedings, at the spot.

Consequently, in response to the said order, the possession of the suit land was delivered to the D Hs and Roznamcha No. 291 and mutation No.

383 dated 22.1.2007 were duly entered in that regard.

6. Now what has been contended by learned Counsel for the Petitioners is that all what has been shown by the Respondents-D Hs with regard to

taking possession of the land is nothing but a paper transaction. Only the symbolic possession has been delivered to the D Hs and no actual

physical possession of the suit land has been delivered to the D Hs and in pursuance to the orders passed by this Court in regular second appeal

preferred by the J Ds, the execution proceedings pending before the court below are liable to be set aside. The contention is merit-less. In the

order dated 23.1.2007 passed by this-Court in RSA No. 4375 of 2006, the execution of the decree was stayed provided the same has not been

executed till the date. Thus, the order was conditional one. The Petitioner has not placed on record any document to the effect that by that date the

actual possession had not been delivered in execution of the decree. Rather on the contrary a bare perusal of the report Annexure P-1 shows that

warrant of possession was duly executed and the delivery of possession was made at the spot vide rapat roznamcha No. 291. A close look to the

report Annexure P-1 also shows that actual possession was delivered as no one had shown any stay order from the Court at the time of delivery of

possession. Mutation No. 383 was also entered. There is nothing to suggest from the record that it was only a symbolic possession on 22.1.2007.

The counsel for the Respondent-DH has referred to Bishan Singh v. Hukam Chand, 1989 (2) (P&H) 187., to urge that if for the sake of

arguments, it was a symbolic possession, the delivery of possession means delivery of actual possession and as such, delivery operates as

dispossession or judgment debtor. No contrary law has been shown by learned Counsel for the Petitioners.

Therefore, in view of what has been said hereinabove, there is no merit in the instant revision petition, which is accordingly dismissed.