

(2010) 10 P&H CK 0289

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1146 of 2010

Gurmit Singh and
Others

APPELLANT

Vs

Jagdish Kumar and
Others

RESPONDENT

Date of Decision: Oct. 25, 2010

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Judgement

Alok Singh, J.

Present petition is filed challenging the order dated 24.10.2009 passed by Civil Judge (Sr. Divn.) Ropar whereby application issuing warrant for possession was dismissed.

2. Undisputedly suit filed by the Plaintiffs-Petitioners for permanent prohibitory injunction was decreed in favour of the Plaintiffs-Petitioners vide judgment and decree dated 20.1.1987. Decree for permanent prohibitory injunction in favour of the Plaintiffs (Petitioners herein) stood confirmed in the appeal also. Meanwhile, Defendants (Respondents herein) allegedly took possession from the Plaintiffs-Petitioners. Plaintiffs-Petitioners moved an application seeking possession from the Defendants - judgment debtor which was allowed vide order dated 12.10.1995. Revision therefrom was also dismissed. Thereafter, Plaintiffs-Petitioners moved an application for issuance of warrant for possession which was dismissed by the impugned order.

3. Undisputedly the decree for possession has also been passed in favour of the Defendants (Respondents herein) against Plaintiffs (Petitioners herein) vide judgment and decree dated 22.9.2008 pertaining to the property in dispute. Learned trial Court has rejected the application for issuance of warrant of possession on the ground that since decree for possession has already been passed in favoaur of the judgment debtor - Respondents herein, hence, there is no question of directing the judgment debtor to deliver back possession to the Plaintiffs-Petitioners herein.

4. Learned Counsel for the Petitioner vehemently argued that decree dated 22.9.2008 passed in favour of the Respondents has already been challenged before the Appellate Court and in the event of allowing the appeal in favour of the Petitioners, Petitioners have to move an application for the restitution of the possession. Learned Counsel for the Petitioner further argued that decree for possession has not attained finality in view of the pendency of the appeal. Learned Counsel further argued that decree for permanent prohibitory injunction in favour of the Petitioner still holds good hence Respondents can not deprive the Petitioner from the enjoyment of the possession of the property in dispute.

5. Be as the case may be, the fact remains that Petitioners have only decree for permanent prohibitory injunction in their favour while Respondents have decree for possession in their favour against the Petitioners. This is also undisputed that decree for possession passed in favour of the Respondents herein is under challenge before the Appellate Court. If Appellate Court allows the appeal in favour of the Petitioners herein then it would be open to the Petitioners herein to move an application seeking possession from the Respondents. However, at this stage in the opinion of this Court Petitioners are not entitled for possession unless and until decree for possession against the Petitioners is set aside.

6. Present petition is disposed of with the direction that Petitioners shall be entitled for possession in the event suit filed by the Respondents seeking possession against the Petitioners stand dismissed by the superior Court.