

(2010) 11 P&H CK 0636

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 3692 of 2010 (O and M)

Surjit Singh @ Seeta
Singh

APPELLANT

Vs

Bahadur Singh

RESPONDENT

Date of Decision: Nov. 29, 2010

Acts Referred:

- Limitation Act, 1963 - Article 136

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Alok Singh, J.

In the present case, order impugned is dated 11.05.2010 passed by learned Additional Civil Judge (Senior Division), Nabha/Executing Court, thereby dismissing the objections filed by the judgment-debtor / Petitioner.

2.The brief facts of the present case are that learned Trial Court vide judgment and decree dated 29.05.1971 decreed the suit of the Plaintiff-decree holder. Decree reads as under:

This suit coming on this day for final disposal before Mrs. Bakhshish Kaur P.C.S., Sub Judge Ist Class, Nabha in the presence of Shri Sukhwant Singh, Advocate, counsel for the Plaintiff and Shri Hira Lal Kapur Advocate, counsel for the Defendant; it is ordered that the suit of the Plaintiff is decreed and a decree for declaration that the sale-deed dated 28.12.1964 executed by Defendant No. 2 Kartar Singh in favour of Defendant No. 1, of the suit land was made for legal necessity and, therefore, it is illegal and void and does not effect the reversionary rights of the Plaintiff after the death of Defendant No. 2, and Plaintiff will be entitled to get possession from Defendant No. 1 on payment of Rs. 2500/-. The parties left to bear their own cost.

3. Decree-holder for the first time deposited Rs. 2500/-on 20.04.2009, which was the condition precedent for obtaining the possession.
4. In the facts and circumstances of the case, the very important question of law arises, what would be the limitation to execute the decree for possession.
5. As per Article 136 of the Limitation Act, limitation of 12 years is prescribed for the execution of decree. Since decree was passed on 29.05.1971, hence, execution moved in the year 2009, after almost more than 38 years from the date of passing the decree, is hopelessly time barred.
6. Learned Counsel for the decree-holder/Respondent vehemently argued that period for execution of the decree for possession would commence from the date of payment of Rs. 2500/-as directed by the Trial Court. Learned Counsel for the decree holder further argued that there is no limitation prescribed for payment of Rs. 2500/-, the condition precedent to obtain the possession under a decree, hence, deposit of Rs. 2500/-on 20.04.2009 was valid and commencing the period of execution from 20.04.2009 would not make the execution time barred.
7. Arguments advanced by the learned Counsel for the decree holder/Respondent are totally misconceived. If possession can be obtained under a decree within 12 years, then it would also amount that the condition precedent to obtain possession pursuant to the decree, should also be within the limitation prescribed for obtaining possession, but there cannot be any law or rule or procedure giving discretion to the decree holder to wait for 38 years and thereafter come and say take Rs. 2500/-and give possession.
8. In the opinion of this Court, execution is hopelessly time barred which ought to have been dismissed and objections raised by the judgment debtor ought to have been allowed only on this ground.
9. In view of this, present petition is allowed. Impugned order is set aside and execution stands dismissed.