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(2012) 05 P&H CK 0172

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3427 of 2012 (O and M)

Nathu Ram APPELLANT

Vs

Chhotu Singh RESPONDENT

Date of Decision: May 30, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 94

Citation: (2013) 1 RCR(Civil) 517

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: R.S. Chouhan, for the Appellant;

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

The judgment-debtor is before this court impugning the order dated 30.4.2012, passed by the learned court below, whereby a direction was issued for grant of police help in execution of a decree of specific performance of agreement to sell. Police help was provided for delivery of possession. Brief facts are that the petitioner entered into an agreement to sell pertaining to the suit property with the respondent on 27.1.1998. The sale deed having not been registered within the time prescribed, the suit was filed for specific performance of agreement to sell. The same was decreed by learned Civil Judge (Junior Division), Abohar on 9.6.2007. The judgment and decree of the trial court attained finality as no appeal was filed against the same. The sale deed having not been registered, the respondent-decree holder filed execution on 24.10.2007. In the aforesaid execution, the decree holder filed application on 20.4.2012 seeking restrain against the petitioner-judgment debtor from harvesting the wheat crop standing on the suit land as he had already deposited compensation for the standing crop in the court. While dismissing the application and considering the statement made by power of attorney holder of the decree holder and the concerned Kanungo, the learned court below directed for

providing police help for execution of the warrant of possession of the property in dispute. The aforesaid order is impugned before this court.

2. Learned counsel for the petitioner submitted that while dismissing the application filed by the decree-holder for restraining the petitioner-judgment debtor from harvesting the wheat crop, the learned court below could not have granted police help to the decree holder for execution of warrant of possession as no such prayer was made by the decree holder before the court below. If the respondent-decree holder was aggrieved against the rejection of his application for restraining the petitioner from harvesting the crop, he could have impugned the order before this court. He further submitted that the petitioner had filed objections on 30.4.2012 as have even been noticed in the impugned order. When the objections filed by the petitioner were still pending, police help could not have been provided for execution of warrant of possession.

3. Learned counsel further submitted that in fact decree has already been executed as the sale deed was registered in favour of the respondent-decree holder on 2.9.2011, however, he was not aware of the reason for delay in execution of the sale deed. He further submitted that objections had been filed to the effect that in the decree passed in favour of the respondent, relief of possession had not been granted as it was simpliciter for specific performance of agreement to sell. The judgment and decree of the court below having already been satisfied with the execution of the sale deed, no further proceedings in the execution could continue.

4. Heard learned counsel for the petitioner and perused the paper book.

5. As has already been noticed above, the suit filed by the respondent for specific performance of agreement to sell was decreed by Civil Judge (Junior Division), Abohar on 9.6.2007. The respondent-plaintiff was directed to deposit the remaining sale consideration and get the sale deed registered. In case of failure of the petitioner-defendant to get the sale deed executed, the respondent-plaintiff was at liberty to get the same executed through court. The petitioner having not executed the sale deed, execution was filed by the respondent on 24.10.2007. Though there is nothing on record to show as to why the execution remained pending for a period of about four years as the sale deed is stated to have been registered on 2.9.2011, but still the fact is that with delay, only the petitioner was the beneficiary.

6. A perusal of the zimni orders produced on record by the petitioner in the petition shows that on 20.1.2012, when the petitioner was directed to be proceeded against ex-parte, the court had noticed that warrant of possession already issued had been received back with a report that the decree holder be directed to deposit the amount of compensation for the standing crops which were assessed at Rs. 8,100/-. The decree holder having deposited the same, warrant of possession was again issued for 17.2.2012.

7. On 17.2.2012, the learned court below passed the following order:

Warrant of possession received back with the report that warrant of possession cannot be executed without police help. Sh. Shamsher Singh, Advocate has produced his report regarding local commissioner. An application for setting aside ex parte proceedings against JD Nathu Ram has been filed. Copy supplied. Sh. Arun Munjal, Advocate has filed power of attorney on behalf of JD. For filing reply by DH for the said application as well as for evidence of the DH regarding police help, to come up on 23.3.2012.

8. On 20.4.2012, the respondent filed application u/s 94 read with Section 151 CPC for restraining the petitioner from harvesting the crop. It was apparently for the reason that the respondent-decree holder had already deposited the amount of compensation for the standing crops, but still the learned court below dismissed the same while observing that even if the judgment-debtor harvests the crop, the decree holder can always get the refund of Rs. 8,100/- deposited by him and further can be compensated by way of damages. He has also a right to seek mesne profits from the judgment debtor.

9. The grouse of the petitioner-judgment debtor is that without there being any application on behalf of the decree holder, the court could not have provided him police help for execution of warrant of possession and further that the objections filed by him pertaining to delivery of possession were pending as the decree passed in favour of the respondent only provided for execution of the sale deed and not delivery of possession.

10. As far as first question is concerned, I do not find any merit in the submissions made. It has been noticed by the learned executing court in the order dated 17.2.2012 that warrant of possession already issued had been received back with the report that the same cannot be executed without police help and further even in the impugned order, the learned court below has noticed the statement of Kulwant Singh, son and power of attorney holder of respondent-decree holder, and also concerned Kanungo-Harpal Singh to the effect that warrant of possession cannot be executed as there was apprehension of breach of peace at the spot and the same cannot be executed without police help. Once the execution was pending before the court and report had been received that warrant of possession cannot be executed without police help as there was apprehension of breach of peace, in my opinion, no illegality has been committed by the court below in providing police help for execution of warrant of possession. A specific application for the purpose was not required to be filed. It is all in the process of execution that effective orders are required to be passed by the court so as to ensure that decree passed in favour of a party is executed.

11. As far as second contention raised by learned counsel for the petitioner regarding the objections filed by him on the ground that relief of possession having not been granted by the court, the executing court could not go beyond the decree is concerned, even that contention is totally misconceived. As has already been

noticed earlier, it is not for the first time that warrant of possession had been issued. The learned executing court had noticed in the order dated 20.1.2012 that warrant of possession already issued had been received back with the report that the decree holder is required to deposit compensation for the standing crops. There is nothing on record to show that the petitioner ever felt aggrieved against the issuance of warrant of possession and challenged the same. Learned counsel for the petitioner was not aware of any proceeding prior thereto. The fact remains that decree of specific performance of agreement to sell was passed in favour of the respondent on 9.6.2007. Even though the execution was filed on 24.10.2007, but still the sale deed was executed on 2.9.2011. The possession is yet to be delivered.

12. As far as jurisdiction of the executing court to grant relief of possession where decree is only for specific performance of agreement to sell is concerned, the same was considered by this court in Makhan Singh and others Vs. Tara Singh and others . It has been opined therein 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. Relevant paragraph 3 thereof is extracted below:

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 Gyasa Vs. Smt. Risalo, , wherein on facts, which are on all fours 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.

13. In S.S. Rajabathar Vs. N.A. Sayeed, , the decree was silent as far as direction to deliver possession of the property is concerned. Then the question arose was whether Executing Court can direct delivery of possession in such situation. It was held that delivery of possession being incidental to the execution of the conveyance in favour of the decree holder, such direction for delivery of possession can be given by the Executing Court.

14. Similar view was expressed by Karnataka High Court in Smt. Vasantibai (Deceased) by L.R. Vs. Mallappa Narasappa Ramankatti (Deceased) by L.Rs, Considering the enunciation of law, as referred to above, the objection, if any, filed by the petitioner to resist the warrant of possession on the ground that this relief had not been granted to the decree holder in the decree passed in his favour, is totally misconceived. Once in execution of the judgment and decree in favour of the respondent, the sale deed had already been registered, there is no reason that the decree holder is not entitled to the possession of the property already registered in his name. In view of my aforesaid discussion, I do not find any merit in the present

petition. Accordingly, the same is dismissed. Petition dismissed.