

Smt. Kasturi Devi and anr. Vs. Harbant Singh and ors.

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Court : Punjab and Haryana

Decided On : Jul-06-2000

Reported in : AIR2000P& H271

Judge : V.M. Jain, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 52; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 32

Appeal No. : Civil Revn. No. 952 of 1999

Appellant : Smt. Kasturi Devi and anr.

Respondent : Harbant Singh and ors.

Advocate for Def. : A.C. Jain, Adv.

Advocate for Pet/Ap. : G.S. Jaswal and; Ajay Jain, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

V.M. Jain, J.

1. This is a Revision Petition against the order dated 20-2-1999 passed by the Executing Court dismissing the objections filed by the petitioners.

2. The facts, which are relevant, for the decision of the present revision petition are that Harbant Singh had filed a suit for permanent injunction against Balbir Singh, Girdhari, Mahabir and Om Parkash Defendants. During the pendency of the suit defendants Nos. 2 and 3 namely Girdhari and Mahabir were reported to be dead and accordingly they were given up. The other two defendants i.e. 1 and 4 namely Balbir Singh and Om Parkash had initially put in appearance but later on they did not put in appearance and consequently they were proceeded against ex parte. Thereafter the plaintiff produced ex parte evidence and after hearing the counsel for the plaintiff, the learned trial Court vide judgment and decree dated 18-12-1992 decreed the suit of the plaintiff ex parte against defendants 1 and 4 namely Balbir Singh and Om Parkash and they were restrained from interfering into the cultivating possession of the plaintiff over the suit land except in due course of law. Subsequently Harbant Singh decree holder moved Execution Petition dated 18-12-1995 against Balbir Singh and Om Parkash defendants (judgment-debtors), alleging therein that after the harvest of Kharif-1995 the judgment-debtors had forcibly dispossessed the decree holder from the suit land and as such the possession of the suit land be got delivered back to the decree holder.

3. During the pendency of the said Execution Petition, Om Parkash defendant--Judgment-debtor filed objections in the said execution petition, alleging therein that he was the lawful owner and in possession of land in dispute since 31-1-1989 on the basis of the sale deed and that Harbant Singh decree-holder had nothing to do with the suit land. It was further alleged that in fact Om Parkash was in actual physical possession of the land in dispute prior to the filing of the suit, during the pendency of the suit and even now. It was alleged that the execution petition for the execution of the decree dated 18-12-1992 was liable to be dismissed. The objections filed by Om Parkash -- Judgment-debtor were dismissed by the Executing Court vide order dated 11-1-1999. Aggrieved against this order of the Executing Court Om Parkash--Judgment-debtor filed Civil Revision No. 315 of 1999 In this Court which was dismissed by Hon'ble Mr. Justice V. S. Aggarwal, vide order dated 21-1-1999, holding that if a decree for prohibitory injunction had been passed, the Court will always have the power to set the wrong right and in case the decree-holder had been dispossessed after the passing of the decree, the Court will not be powerless, and would have the power to restore the

possession in an appropriate case. After the objections filed by Om Parkash were dismissed by the Executing Court and the revision filed by Om Parkash was also dismissed by this Court, the present petitioners namely Smt. Kasturi Devi mother of Mahabir Parshad and Kalu Ram son of Girdhari filed third party objections before the Executing Court, alleging therein that during the pendency of the suit filed by Harbant Singh, Mahabir Parshad and Girdhari defendants had died and they were given up without impleading their legal representatives i.e. objectors namely Smt. Kasturi Devi mother of Mahabir Parshad and Kalu Ram son of Girdhari. It was further alleged that the decree passed by the trial Court was not binding on the present objectors. It was further alleged that Balbir Singh defendant, who was the owner of the property in dispute, had mortgaged the land in question with possession with Girdhari Lal and later on the land was purchased by Om Parkash and Mahabir and at no point of time Harbant Singh come in possession of the land in question as a tenant or otherwise. It was alleged that the warrants of possession issued in favour of Harbant Singh decree holder could not be executed against the objectors who were in possession of the land in dispute. The said objection petition was contested by Harbant Singh decree-holder by filing a reply. The learned Executing Court after hearing both sides and after perusing the record dismissed the objection petition vide order dated 20-2-1999. Aggrieved against this order of the Executing Court, the objectors namely Smt. Kasturi Devi and Kalu Ram filed the present revision petition in this Court.

4. Notice of Motion was issued. Counsel of the parties have been heard and record perused.

5. The learned counsel appearing for the objector-petitioners submitted before me that the decree dated 18-12-1992 was a decree for permanent injunction and warrants of possessions could not be issued under Order 21, Rule 32, C.P.C., for delivering back the possession of the suit property to the plaintiff-decree-holder. Reliance was placed on AIR 1972 Delhi 142, Sarup Singh v. Daryodhan Singh, (1997) 1 Civil Court C 606 : (1997 AIHC 1444) (Andh Pra); G. Anandam v. The Warangal Municipal Corporation, (1999) 121 Pun LR 401; Narinder Singh v. Maya Devi, (1993) 1 Recent Rev Rep 29 (1); Dharam Pal v. Ami Lal, (1996) 2 JT (SC) 494: (AIR 1996 SC 1809); Ram Chandra Verma v. Shri Jagat Singh Singhi and

(1996) 2 JT (SC) 716: (AIR 1996 SC 2050); Babulal v. Raj Kumar. It was further submitted that since there was no decree against Girdhari and Mahabir, the decree in question could not be executed by Issuing warrants of possession against the L.Rs. of Girdhari and Mahabir. On the other hand, the learned counsel appearing for the decree-holder-respondent No. 1-- Harbant Singh submitted before me that the suit was filed on 10-10-1987 and was decreed by the trial Court on 18-12-1992 against defendant No. 1--Balbir Singh and defendant No. 4-- Om Parkash while the other two defendants namely Girdhari and Mahabir were given up as they had died during the pendency of the suit. It was submitted that the suit was decreed by the trial Court on the basis of the Khasra Girdawari entries showing the possession of Harbant Singh-plaintiff over the suit land. It was submitted that the various sale deeds executed by Balbir Singh-defendant in respect of said land were executed during the pendency of the suit. It was further submitted that the mortgage deed in question would not confer any right on the objector-petitioners, in view of the subsequent sale deeds in respect of the suit land during the pendency of the suit. It was further submitted that the objector petitioners, who are the legal heirs of Girdhari and Mahabir, had no independent right in the suit land, as the suit land was sold by Balbir Singh during the pendency of the suit and the vendees would step into the shoes of Balbir Singh-vendor. It was further submitted that the present objection petition filed by objectors was nothing but an abuse on the process of Court, as the objectors had filed the objection petition in collusion with Om Parkash-- Judgment-debtor who had lost up to this Court in the objections filed by him. It was submitted that joint written arguments were submitted by Om Parkash, Smt. Kasturi Devi and Kalu Ram in support of the objection petition filed by Smt. Kasturi Devi and Kalu Ram and this would show the interest of Om Parkash, Smt. Kasturi Devi and Kalu Ram. It was further submitted that if the decree-holder was dispossessed from the suit property, even after the decree for injunction was passed in his favour, the decree-holder was entitled to seek back the possession of the land in question. Reliance has placed on 1993 (2) Cur LJ 116, Harbans Singh v. Daulat Ram. Reliance was also placed on the law laid down by this Court in Civil Revision No. 315 of 1999, Om Parkash v. Harbant Singh etc. on 21-1-1999. Reliance was also placed on AIR 1991 Mad 323 (FB); Vidya Charan Shukla v. Tamil Nadu Olympic Association. It

was further submitted that the objector-petitioners had nothing to do with the property in question as the decree-holder was executing the decree only against defendants Nos. 1 and 4 who are the judgment-debtors in this case,

6. After hearing both sides and after perusing the record, I find no merit in this revision petition which is liable to be dismissed.

7. A perusal of the judgment dated 18-12-1992 passed by the trial Court, decreeing the suit of Harbant Singh-- plaintiff, would show that while decreeing the suit the trial Court had noticed the copies of various sale deeds executed by defendant No. 1--Balbir Singh in favour of Mahabir, Om Parkash and Kalu Ram, copies of which were placed on record. The trial Court had also found that on the basis of the Khasra Girdawari for the year 1985-86 Harbant Singh-- plaintiff was found to be in possession of the suit property. Copies of sale deeds executed by Balbir Singh have been placed on record before me. As per the sale deed dated 15-3-1988 Balbir Singh-- defendant No. 1 had sold a part of the suit land in favour of defendant No. 3-- Mahabir and defendant No. 4-- Om Parkash. As per sale deed dated 10-6-1988. Balbir Singh-- defendant had sold another part of the suit land in favour of defendant No. 3-- Mahabir and present objector petitioner Kalu, who is the son of defendant No. 2 Girdhari. The third sale deed which is dated 31-1-1989 would show that Balbir Singh defendant had sold the remaining part of the suit land to Om Parkash-- defendant No. 4 and Mahabir defendant No. 3. In this sale deed it was mentioned that the possession of the land covered by the sale deed was already with Girdhari. In the other two sale deeds referred to above it was mentioned that possession was being delivered to the vendees by virtue of the said sale deeds. All the three sale deeds had come into existence during the pendency of the suit, inasmuch as the suit was filed on 10-10-1987 whereas these sale deeds had come into existence on 15-3-1988, 10-6-1988 and 31-1-1989 respectively.

8. If any portion of the land in dispute was purchased by defendant No. 3-- Mahabir and defendant No. 4-- Om Parkash during the pendency of the suit, they would step into the shoes of defendant No. 1 Balbir Singh and the principle of 'Lis pendens' would apply to the present case. So far as portion of the land purchased

by objector-petitioner Kalu Ram is concerned, the petition will remain the same inasmuch as he had also purchased the portion of the suit land during the pendency of the suit. The objector petitioners are also relying upon a mortgage deed allegedly executed by Balbir Singh in favour of Girdhari on 15-7-1986. A copy of the said mortgage deed has been placed on the record by the petitioners. As per the said mortgage deed, Balbir Singh--defendant No. 1 had mortgaged the entire land in question to said Girdhari for a sum of Rs. 20,000/- only and as per the said mortgage deed, it was a mortgage with possession. To my mind, it appears that this mortgage deed was a sham transaction and would not confer any right either on Girdhari or after his death upon his legal heirs. Defendant No. 4 Om Parkash himself is the son of said Girdhari. Objector-petitioner Kalu Ram is also a son of said Girdhari. By virtue of the three sale deeds referred to above, Mahabir, Om Parkash and Kalu Ram had purchased the entire suit property during the pendency of the suit filed by Harbant Singh against Balbir Singh, etc. In none of the three sale deeds there is any mention that the land in question was already under mortgage with Girdhari or that the possession of the suit land was already with Girdhari as a mortgagee. On the other hand, by virtue of two sale deeds dated 15-3-1988 and, 10-6-1988 a portion of the suit land was sold by Balbir Singh in favour of Mahabir, Om Parkash son of Girdhari and Kalu Ram son of Girdhari and it is mentioned that the possession was being delivered to them under the sale deeds. If the land had actually mortgaged with Girdhari and if Girdhari had already been in possession of the suit land, this fact would have found mention in these two sale deeds. However nothing of the kind was done. Substantial portion of the land in dispute is covered by these two sale deeds. So far as the third sale deed dated 31-1-1989 is concerned, executed by Balbir Singh in favour of Om Parkash son of Girdhari and Mahabir defendants, it is mentioned that the possession of the land in dispute was already with Girdhari. However, in this sale deed there was no reference to the mortgage deed dated 15-7-1986 executed by Balbir Singh in favour of Girdhari in respect of the whole of the suit land nor it was mentioned in the sale deed about the possession of the Girdhari over the land in question as a mortgagee. Under these circumstances. It could not be said that Girdhari was already in possession of the suit land by virtue of the mortgage deed dated 15-7-1986. This is especially so when Balbir Singh (who was admittedly the

owner of the suit land) had made a statement before the Revenue Authorities on 26-6-1986 that the Khasra Girdawari be entered in favour of Harbant Singh-plaintiff as Gair Marusi and accordingly the Khasra Girdawari entry was changed in favour of Harbant Singh-plaintiff in respect of entire land. Having got the Khasra Girdawari entry changed in favour of Harbant Singh-plaintiff on 26-6-1986, Balbir Singh defendant could not have delivered the possession of the suit land in favour of Girdhari on 15-7-1986 at the time of execution of the alleged mortgage deed. Any entry made by Balbir Singh in the three sale deeds referred to above regarding possession/delivery of possession would be of no consequence, as these sale deeds had come into existence during the pendency of the civil suit filed by Harbant Singh plaintiff and any admission regarding possession made by Balbir Singh defendant in favour of Mahabir or Om Parkash and Kalu Ram sons of Girdhari would be of no help to the defendants or the present petitioners to show that in fact they were independently in possession of the suit property, especially when the civil Court found as a fact that in fact Harbant Singh plaintiff was in possession of the suit property and had restrained defendant No. 1 Balbir Singh and defendant No. 4 Om Parkash from interfering in the possession of Harbant Singh plaintiff over the suit land except in due course of law.

9. In the present case, it is not disputed before me that at no point of time Harbant Singh plaintiff was dispossessed from the suit land in execution of any order or decree passed by any competent Court of law. Under these circumstances, it would be clear that Harbant Singh-plaintiff-decree-holder was dispossessed from the suit land otherwise than in due course of law. That being so, in my opinion, Harbant Singh-decree holder was entitled to seek back the possession of the suit land in the execution proceedings under Order 21, Rule 32, C.P.C. In (1993) 2 Cur LJ 116 (supra) it was held by this Court that where the executing Court found that the decree for permanent injunction had been violated, the executing Court exercising the powers under Order 21, Rule 32, C.P.C. was competent to issue direction to the Judgment-debtors to deliver back the possession to the decree-holders which they had taken in violation of the decree. It was further held that Court can always enforce its decree by giving such a direction or by issuing warrants of possession. Similarly, in Civil Revision No. 315 of 1999 Om Parkash v. Harbans Singh etc., decided on 21-1-1999, it was held by this Court that if a

decree for prohibitory Injunction has been passed the Court will always have the power to set the wrong right and the Court will not be powerless and will have the power to restore the possession to the decree-holder in an appropriate case. This order was passed by this Court in the Revision Petition filed by Om Parkash defendant in the present suit, when the objection petition filed by Om Parkash was dismissed by the Executing Court and the order passed by the Executing Court was upheld by this Court.

10. Various authorities relied upon by the learned counsel of the petitioners, in my opinion, would have no application to the facts of the present case.

11. In AIR 1972 Delhi 142 (supra) it was held by Delhi High Court that issuance of warrants for delivery of possession in execution of a decree for injunction passed in a suit for mandatory injunction to vacate the disputed premises was not justified. The law laid down in this authority would not apply to facts of the present case, where the Court had passed a decree for prohibitory injunction and in violation of the decree, a decree-holder was dispossessed and in these circumstances the Court was competent to order the restoration of the property to the plaintiff by issuing warrants of possession. The other authorities namely (1993) 1 Rec Rev R 29(1) (supra), (1999) 121 Punj LR 401 (supra) and (1997) 1 Civil Court C 606 : (1997 AIHC 1444) (supra), relied upon by the learned counsel for the petitioners, in my opinion, would also have no application to the facts of the present case, especially when the petitioners had filed the objections as third party objections. So far as the present petitioners are concerned, they cannot ask the Court that warrants of possession should not be issued in favour of the decree-holder. This is especially so, when the objections against the issuance of warrants of possession, filed by Om Parkash defendant, had already been dismissed by the Executing Court and the order of the Executing Court has already been upheld by this Court in the Civil Revision filed by Om Parkash.

12. The authorities (1996) 2 JT (SC) 494 : (AIR 1996 SC 1809) (supra) and (1996) 2 JT 716: (AIR 1996 SC 2050) (supra), relied upon by the learned counsel for the objector, in my opinion, would also have no application to the facts of the present case. In the present case, the allegation of the decree-holder is that he has been

dispossessed by defendants Nos. 1 and 4 and he is seeking the possession of the suit property only from defendants Nos. 1 and 4, in any case, the objector petitioners who are the, successors in interest of defendants Nos. 2 and 3 (who were given up before the trial Court), had no independent right in the property in dispute and had stepped into the shoes of defendant No. 1 Balbir Singh. who admittedly was the owner of the suit property at the time when the suit was filed by Harbant Singh. The principle of 'Lis pendens' would apply to the facts of the present case. That being so, defendants Nos. 2 and 3 and their successors in interest would also be bound by the decree in question, as they had stepped into the shoes of defendant No. 1, Balbir Singh.

13. There is another aspect of the matter which would be relevant for the decision of the present case. As referred to above, three sale deeds in question had come into existence during the pendency of the suit. The vendees would be bound by the decree passed against their vendor namely Balbir Singh. So far as the mortgage deed in question is concerned, no doubt the same is prior to the filing of the suit by Harbant Singh against Balbir Singh, etc. During the pendency of the suit, admittedly Girdhari in whose favour the suit mortgage deed was executed had died. Defendant No. 4, Om Parkash and present objector-petitioner Kalu Ram are the sons of said Girdhari, On the death of Girdhari the property would devolve upon his heirs, namely Kalu Ram and Om Parkash. On his death, they would become the mortgagees in respect of the suit land. Kalu Ram and Om Parkash had purchased the suit land along with Mahabir during the pendency of the suit. Mortgage would merge with the sale of the suit land. A person cannot be the mortgagor as well as the mortgagee. In these circumstances, there was no subsisting mortgage at the time when the decree in question was passed in favour of Harbant Singh-plaintiff and against Balbir Singh defendant No. 1 and Om Parkash-defendant No. 4. As referred to above, defendant No. 3 Mahabir had purchased the suit property during the pendency of the suit and thus he would be bound by the decree passed against his vendor Balbir Singh. That being so, Smt. Kasturi Devi, mother of Mahabir, would have no Independent right in respect to suit property and cannot be allowed to urge that no decree was passed against Mahabir. So far as Girdhari, the alleged mortgagee, is concerned, on his death the mortgage rights devolved upon his legal heirs, namely Om Parkash and Kalu Ram

and they being the vendees, it could not be said that Kalu Ram petitioner had any independent right as a mortgagee in respect of the suit property.

14. Along with the revision petition, the petitioners had also placed on record a copy of the order dated 27-9-1988 passed by the Assistant Collector, Second Class. Rania, ordering the correction of Khasra Girdawari in respect of suit property in favour of Girdhari for Khariff-1985 to Rabi-1987. Obviously this copy of the order dated 27-9-1988 passed by the Assistant Collector was placed on the record to show that Girdhari was in possession of the suit property since Kharif-1985. Although during the course of arguments the learned counsel appearing for the petitioners -had not referred to this document, but considering that this document is lying with the revision petition, in my opinion, it would be appropriate to discuss this document as well. Since this order of the Assistant Collector had come into existence during the pendency of the civil suit filed by Harbant Singh against Balbir Singh, etc., in my opinion, any order passed by the Assistant Collector, ordering the correction of Khasra Girdawari, would be of no relevance and would not affect the powers of the Civil Court to decide the suit on the basis of the evidence led by the parties. Since this order passed by the Assistant Collector ordering the correction of Khasra Girdwari had come into existence during the pendency of the suit, in my opinion, the said document would have no relevance and has to be ignored.

15. In view of my detailed discussion above, in my opinion, the learned Executing Court was perfectly justified in dismissing the objections filed by the present petitioners and in ordering the issuance of warrants of possession in execution of the decree passed in favour of Harbant Singh plaintiff-decree holder. Accordingly, I find no merit in this revision petition and the same is hereby dismissed. There shall be no order as to costs.