
(2025) 05 SHI CK 1061
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 295 Of 2021

Hardeep Kaur Gandhi And Ors

APPELLANT

Vs

Ajit Lajwanti Gujral Trust & Ors

RESPONDENT

Date of Decision : 29-05-2025

Acts Referred:

Citation : (2025) 05 SHI CK 1061

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Ashok Chaudhary, M.A. Safee, Naresh Kaul

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioners have assailed order dated 10.09.2021 passed by learned Additional District Judge (1), Shimla in Case No. 311 of 2020, whereby the application of the petitioners under Section 144 of the Code of Civil Procedure (for short "the Code") has been dismissed.

2. Petitioners were defendants in Civil Suit No. 6-S/1 of 1983/96 filed by the respondents herein. The said suit was decreed by the learned Additional District Judge, Shimla vide decree dated 16.01.1998 in following terms:-

" This suit coming on this day for final disposal before (Sh. Dharam Chand Chaudhary, Addl. District Judge, Shimla) in the presence of Sh. Bhupinder Gupta, Advocate for the plaintiffs and Sh. Pawan Thakur, Advocate for the defendants and it is ordered that the suit of the plaintiff is partly decreed. The decree for possession of suit property vis. the portion of the Kothi shown with red ink in the plan attached is passed in favour of the plaintiffs and against the defendants. The defendants are restrained by way of decree of permanent injunction not to cause any interference whatsoever in the possession of the plaintiff over the suit land detailed below para 4 of the plaint viz:-

i) 8 plots of land measuring 6 bighas 2 bisiwas comprised in Khasra Nos. 659, 665, 670, 671, 673, 678, 679/1 and 680 entered at Khewat No. 47, Khatauni No. 50. (Saknae).

ii) Land 2 plots measuring 4 bighas 8 bisiwas comprised in Khasra No. 668 and 675 entered at Khewat No. 90 Khatauni No.131.

iii) Land 3 plots measuring 1 bighas 3 bisiwas comprised in Khasra No. 670/1, 672 and 674.

iv) Land 9 plots measuring 2 bighas 17 bisiwas comprised in Khasra No.660, 661, 662, 663, 664, 665, 667, 674/1 and 703/1 entered at Khewat No.66 min, Khatauni No. 83 in accordance with jamabandi for 1979-80 situated at Mauza Badhai, Tehsil and Distt. Shimla along with all buildings constructions etc., standing thereon i.e. the entire property mentioned in para 1 of the plaint except property comprised in and standing upon land Khasra No.677 and western part of Khasra No.679, total measuring 1 bighas 3 bisiwas.

The claim of the damages in the sum of Rs.6,000/-till the filing of the suit and thereafter @ Rs.3000/-per month on account of damages caused to the plaintiffs as made by them is, however, rejected. It is further ordered that the parties are left to bear their own costs."

3. The aforesaid decree attained finality having been affirmed by this Court as also by the Hon'ble Supreme Court.

4. The petitioners and respondents herein shall be referred as judgment debtors (JDs) and decree holders (DHs) respectively for the sake of convenience and clarity.

5. The decree holders filed execution petition for execution of the decree dated 16.01.1998. Judgment debtors filed objections under Section 47 of the Code. The executing Court dismissed the objections of the judgment debtors and this order was assailed by the JDs before this Court by way of Civil Revision No. 7 of 2015. This Court disposed of the Civil Revision No. 7 of 2015 by remanding the matter back to the executing Court for deciding afresh after framing issues. The result remained the same and the objections were again dismissed by the learned executing Court. JDs again assailed the order passed by the executing Court before this Court in C.R. No. 160 of 2017, which was dismissed by this Court vide order dated 25.07.2019.

6. Thereafter JDs again approached the executing Court by filing two applications being CMP No. 1865/2019 and CMP No. 1778/2019. Both the applications were dismissed by the executing Court on 21.12.2019 which order was assailed by the JDs before this Court by way of CMPMO No. 1115 of 2019. A coordinate bench of this Court vide judgment dated 25.02.2020 dismissed the petition i.e. CMPMO No. 1115 of 2019.

7. On 27.02.2020, the executing Court issued warrant of possession directing the

Bailiff of the Court to deliver the possession of the property to the decree holders in terms of the decree dated 16.01.1998. In compliance, the decree was executed on 28.02.2020 and the possession of the immovable property in terms of the decree was handedover to the decree holders. Accordingly, the execution petition was disposed of by the executing Court on 29.02.2020.

8. JDs then filed an application under Section 144 of the Code before the executing Court on 25.06.2020 seeking relief in following terms:-

"i) That the petition may kindly be allowed and the petitioners be handed over the possession of built up structures i.e. cow shed on Khasra No. 665, entrance room on Khasra No. 667 and also the two storeyed structure upon the land comprised in Khasra No. 666 as the spot position be put at the same position, as it was existing prior to executing the warrants of possession in favour of the respondents.

"ii) That in order to properly adjudicate upon the matter in proper manner and to arrive at just and proper conclusion, since the property in suit requires proper identification, one Local Commissioner in the rank of Assistant Collector 1st Grade is required to be appointed and directed to visit the spot so that the true and correct picture should come to light.

iv) That since the decree holder have played fraud upon the Court by taking the possession of excess property which was not the part of the decree, as such, they may kindly be ordered to be punished strictly in accordance with law."

9. JDs alleged that while executing the decree, the possession of the property which was not even the subject matter of the decree had been wrongly taken over from them and handedover to the DHs. The properties in respect of which the possession was wrongly alleged to have been given to decree holders, according to JDs were comprised in Khasra Nos. 665, 666 and 667. JDs had raised the question that without proper identification of the property in respect of which decree was passed in favour of decree holders, undue and illegal benefit had been taken by DHs. Allegations were made against the Bailiff of the Court to have connived with the DHs in getting possession of property which was neither part of the suit nor the decree. The JDs also made reference to the reports submitted by the Revenue Officers in the past according to which the decree holders were not entitled to the possession of land comprised in Khasra Nos. 665, 666 and 667. It was also the case of the JDs that the Bailiff of the Court should have firstly got the property identified with the aid of revenue records by the revenue staff and thereafter should have proceeded further.

10. The decree holders filed their reply to the applications and raised preliminary objections as to the maintainability and estoppel. It was alleged that the status of the JDs had already been adjudged to be that of trespasser. The judgment debtors were also accused of having suppressed the fact about the filing of CMPMO No. 1115 of 2019 and dismissal order dated 25.02.2020. It was submitted that the dispute with respect to the identification of property had

already attained the finality vide judgment passed by this Court on 25.02.2020 in CMPMO No. 1115 of 2019. Rest of the factual aspects as averred by the JDS in the application were also denied.

11. JDs filed rejoinder inter alia denying the objections raised by the decree holders and reiterating their stand as raised in the application.

12. Learned Additional District Judge (1), Shimla vide impugned order dated 10.09.2021 has dismissed the application by holding that the application was not maintainable under Section 144 of the Code as it was not the case of variation, reversal or modification of the decree passed by the original Court in appeal, revision or in any other proceedings. It was also observed that the JDs had already been declared as trespassers and further they had not raised any plea with respect to their alleged lawful possession of Khasra No. 665, 666 and 667 either in appeal before this Court or in Special Leave Petition before the Hon'ble Supreme Court and thereafter by way of objections raised to the execution of decree. The principle of estoppel has been applied against the JDs and accordingly, the application has been dismissed.

13. I have heard learned counsel for the parties and have also gone through the entire record carefully.

14. Shri G.D. Verma, learned Senior Advocate representing the judgment debtors laid stress on the contention that the Civil Court was not necessarily bound to confine itself to the limits prescribed under Section 144 of the Code and in exercise of the inherent jurisdiction, the Court had all the powers to undo the effects of injustice meted out to the JDs. The factual background as narrated by the learned Senior Counsel for judgment debtors is the same as noticed hereinabove. He simply alleged that the property in Khasra No. 665, 666 and 667 was not the part of the decree and still its possession had wrongly been delivered to the decree holders after unlawful dispossession of the JDs.

15. On the other hand, Shri Bhupender Gupta, learned Senior Advocate for the Dhs would contend that all the questions as to the identity of suit property, stood already adjudicated during the proceedings of the Civil Suit as also in execution by the courts of original jurisdiction as also in appeal, revision and other proceedings before this Court as also before Hon'ble Supreme Court of India. It has, thus, been submitted that the attempt of JDs to rake up the same issue time and again is abuse of process of Court. The conduct of the judgment debtors has been alleged as malafide.

16. Having considered the rival contentions, I am of the considered view that the judgment debtors cannot succeed in the instant petition. My reasons are as under :-

17. The impugned order had been passed by the executing Court in an application of the JDs filed under Section 144 of the Code. Section 144 of the Code reads as under:-

“144. Application for restitution – (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.”

18. Section 144 of the Code vests the court with jurisdiction to restore the status quo ante as was before the passing of any decree or order that may be necessitated as a consequence of setting aside, reversal or modification of such decree or order. The sine qua non, for exercise of such jurisdiction is the proof of the fact that the decree or order passed by a Court, under which one of the parties has gained advantage, has been set aside, reversed or modified in appeal, revision or in any other proceedings.

19. In *Murti Bhawani Mata Mandi represented through Pujari Ganeshi Lal (dead) through Legal presentative Kailash vs. Ramesh & Ors.*, (2019)3 SCC 707, the Hon’ble Supreme Court has held as under:-

“9. Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed.”

20. Similar reiteration of law is found in *Bansidhar Sharma (since deceased) represented by his Legal representative vs. State of Rajasthan & Ors.*, (2019)19 SCC 701:-

“17. It clearly transpires that Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they

were in at the time when the Court by its action had displaced them.”

21. Since, in the facts of the case in hand, none of these requirements were found, the impugned order cannot be faulted with.

22. To support his arguments that the Courts can exercise inherent jurisdiction beyond limits of Section 144 of the Code to set right the injustice, learned Senior Counsel for the JDs has placed reliance on the judgments passed in *South Eastern Coalfields Ltd. vs. State of M.P. & Ors.*, (2003)8 SCC 648, *Citibank N.A. vs. Hiten P. Dalal & Ors.*, (2016)1 SCC 411 and *Indore Development Authority vs. Manohar Lal & Ors.*, (2020)8 SCC 129.

23. No doubt, by exercising inherent jurisdiction the Civil Court can restore unjustified and unwarranted loss suffered by any litigating party. Nonetheless, the underlying principle remains the same and cannot be mere ipse dixit of the Court. The principle of restitution, even by exercise of inherent jurisdiction, comes into play once the decree or order is reversed or modified and it is found that under such decree or order one of the litigant party had gained undue enrichment or benefit at the cost of other.

24. Thus, in order to succeed in their endeavour, the JDs had to show that the decree passed by the original Court or the order passed by the executing Court had been modified or reversed or altered in any other proceedings. The factual position is otherwise. The decree passed by the original Court has been maintained by this Court as also by the Hon’ble Supreme Court. Similarly, the orders passed in execution petition by the executing Court have been tested by this Court on the asking of the JDs in C.R. No.160 of 2017 and CMPMO No.1115 of 2019. It being so, there was no case for JDs to seek indulgence of executing Court or this Court to exercise jurisdiction under Section 144 of the Code or the inherent jurisdiction of this Court.

25. In result, there is no merit in the instant petition and the same is accordingly dismissed with costs of Rs. 25,000/-. Pending applications, if any, also stand disposed of.