
(2006) 10 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5410 of 2006

Jalaur Singh

APPELLANT

Vs

Shiromani Gurdwara Parbandhak Committee, Amritsar

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Citation : (2007) 1 PLR 496 : (2007) 1 RCR(Civil) 160

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. P.K. Palli, Sr. Advocate with Ms. Namarta, Advocate. Mr. Sukhbir Singh, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. The present revision petition has been filed against the order dated 8.9.2006 passed by the learned Addl. District Judge, Barnala vide which the learned executing Court after rejecting the preliminary objection of the petitioner with regard to the maintainability of the execution application after the decree has been satisfied has ordered the recording of the statement of the revenue officer.
2. The learned counsel for the petitioner contends that under the provisions of Order 21 Rule 35 CPC once possession has been delivered and accepted by the decreeholder, the Court has no jurisdiction to entertain the second application for possession. The learned counsel for the petitioner further contends that even under Section 144 of CPC, the possession cannot be restored to a party once the decree has been satisfied.
3. The contention of the learned counsel for the petitioner is that, though these contentions have been noticed by the learned Executing Court but no order thereon has been passed.
4. The learned Sr. counsel for the petitioner further contends that in view of the impugned order the objections have already attained finality as they already stand rejected by way of the impugned order. The filing of reply is thus empty formality. The learned counsel for the petitioner in support of his contentions

placed reliance on the judgment reported as *Shew Bux Mohata and another v. Bengal Breweries Ltd. and others*, AIR 1961 Supreme Court 137 wherein it has been held as under :

"..... It is open to the decreeholder to accept delivery of possession under that rule without actual removal of the person in possession. If he does that, then he cannot later say that he has not been given that possession to which he was entitled under the law. This is what happened in this case. The decreeholders in the present case, of their own accepted delivery of possession with defendant No. 4 remaining on the premises with their permission. They granted a receipt acknowledging full delivery of possession. They permitted the execution case to be dismissed on September 8, 1949, on the basis that full possession had been delivered to them by defendant No. 4. The fact that they put their guards on the premises as mentioned in the Nazir's return would also show that they had obtained full possession. It was open to the decreeholders to accept such possession. Having once done so, they are bound to the position that the decree has been fully executed, from which it follows, that it cannot be executed anymore. In the case of *Jagdish Nath Roy v. Nafar Chandra Parmanik*, 35 Cal. WN 12 : AIR 1931 Cal. 427, an exactly similar thing had happened and it was held that the decree was not capable of further execution. It was there said at p. 15 (of Cal WN) : (at p. 429 of AIR) :

"The case, therefore, seems to me to be one of those cases in which a decree holder having armed himself with a decree for khas possession executes that decree in the first instance by obtaining symbolic possession only with one ulterior object of his own, and thereafter subsequently and as a second instalment asks for khas possession. The question is whether such a course is permissible under the law. I am of opinion that it is not."

5. He has also placed reliance on the judgment of Karnataka High Court in the case of *Mrs. Rosane Jerome D'Souza v. Bhagvandas Gangaram Kamble (deceased)* By LRs., 2005(3) Civil Court Cases 362 and *Jerome Saldanha v. Smt. Kaushalya Purshothama*, 2001(3) Civil Court Cases 331 to contend that even if the judgment debtor has entered into the premises in question, it will be a fresh cause of action for the decreeholder, the second petition for execution of the decree would not be maintainable.

6. I have considered the arguments of the learned counsel for the parties and find no force in the same in view of the fact that these very objections were raised by the petitioner in C.R. No. 775 of 2006 (*Jalaur Singh v. Shiromani Gurdwara Parandhak Committee, Amritsar*) which was dismissed on 9.2.2006 by passing the following order :

"The judgment debtor has filed this petition under Article 227 of the Constitution of India for setting aside order dated 14.1.2006 passed by the executing Court whereby his objections have been dismissed while observing that the decree is still to be executed. It has been observed that in the year 1985 the objections

filed by the petitioner were dismissed and thereafter the execution application was adjourned sine die and the same was restored by order dated 24.10.2005 passed by the executing Court.

Learned counsel for the petitioner contends that since the decree stands satisfied, it cannot be revived. On a specific question being put, the learned counsel has not been able to show vide which order decree stands satisfied.

In view of the above, this petition is without merit and the same is dismissed."

Thus, it would be seen that this Court came to a specific conclusion that the decree was not satisfied. The learned counsel for the petitioner contends that as the said order is distinguishable as at that time report of the revenue officer dated 2.11.1988 was not before the Court.

Be that as it may, it could be said that the report of 1988 was in existence and in the knowledge of the petitioner at that time, therefore, no benefit thereof can be derived now.

Accordingly, I find no merit.

Dismissed.