
(1990) 11 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1796 of 1988

Maj. Raj Kishan and Others	Vs	APPELLANT
Sh. Chiranji Lal and Others		RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, 11 , 115

Citation : (1991) 99 PLR 155 : (1991) 1 RCR(Rent) 51

Hon'ble Judges : Naresh Chander Jain, J

Bench : Single Bench

Advocate : V.K. Jhanji, Ravinder Jain and Sidharath Sarup, for the Appellant;
None, for the Respondent

Final Decision : Allowed

Judgement

Naresh Chander Jain, J.—This order of mine would dispose of two Civil Revision Petitions No. 1796 and 1797 of 1988 as the point of law involved is similar. The two revision petitions have arisen out of two orders as two suits were filed by the petitioners for setting aside two alienations made by Gauri Shanker. The facts of the case be picked up from Civil Revision No. 1796 of 1988.

2. This revision petition has been filed by the decree-holders against the order of the execution court dated 1-2-1988 passed by Shri G.L. Goyal, Senior Subordinate Judge, Jind whereby the objection petition filed by the judgment debtor Charanji Lal has been allowed. Under the impugned order, it has been held that the procedure as laid down under Order 21 Rule 35 (2) of the CPC should be followed. In the revision petition judgment debtor-respondent No. 1 Chiranji Lal has been served. He has chosen not to appear despite service.

3. In view of the admitted position, the facts of the case need not be noted in detail. It would be sufficient to observe that a decree was passed in favour of the petitioners to the effect that they are entitled to possession of the land measuring 61 kanals, 3 marlas in a suit instituted by them in which the sales

effected by Gauri Shanker were set aside. The judgment and decree of the first Appellate Court setting aside the sales was upheld by this court in Regular Second Appeals No. 1567 and 1558 of 1974 Charanji Lal v. Capt Raj Kumar and Ors. decided on March 3, 1984. When the aforesaid appeals were pending R. N Mittal, J (as his Lordship then was) was pleased to vacate the stay order which was granted in favour of respondent No. 1-judgment debtor as he was the appellant in the aforesaid mentioned appeals. The following order was passed:

"This order will dispose of civil Misc. Application No. 46H-C of 1974 in Regular Second Appeal No. 1567 of 1974 and 4654-C of 1974 in Regular Second Appeal No. 15-8 of 1974. Applications were filed by the appellants for grant of stay order which was granted by me on September 25, 1974, with notice to the other side. The respondents have appeared and contested the application. Inter alia it is stated by the respondents that the property in dispute was sold by the appellant in spite of the injunction order issued by the first appellate court. The possession of the property had been delivered to the vendee. The learned counsel for the respondents has stated that the applicant has not pleaded in the application for stay that he was in possession of the property in dispute. I have seen the application and find that the allegation of the respondent is correct. The learned counsel for the applicant requested for an adjournment on May 2, 1975. The allegations made by the respondent in the reply have not been denied by a counter affidavit by the applicant. After hearing the learned counsels for the parties, I do not find sufficient reasons for continuing the stay order. I, therefore, vacate the same. In the circumstances of the case, however, I make no order as to costs."

After the vacation of the stay, the execution of the decree passed in favour of the petitioners was taken out and the executing court (Shri S.D. Arora, Senior Subordinate Judge, Jind) vide its order dated 2-11-1981 dismissed the objection petition of respondent No. 1-judgment debtor, and held that the provisions of Order 21 Rule 35 do not apply in the present case and the decree-holders i.e. the petitioners are entitled to have physical possession of the land in dispute.

4. The precise argument of Shri V. K. Jhanji, Senior Advocate, learned counsel for the petitioners is that once the executing court at an earlier occasion has held that the petitioners decree holders are entitled to actual physical possession of the property in dispute, the executing Court at a later stage cannot legally hold that the procedure prescribed under Order 21 Rule 35 C. P. C. must be followed. The argument has got all the force. I have perused the order passed by Shri S. D. Arora on 2-11-1981. He has specifically observed in the following terms :

"The decree holders as such are entitled to have physical possession of the land in dispute."

In view of the specific objections having been dealt with by the executing Court on 2-11-1981, this very question could not be re-agitated again and in any case the Senior Subordinate Judge could not hold to the contrary. It has been held in

scores of rulings including the one Kani Ram and Anr. v. Smt, Kazani and Ors. 1922 S.C.C. 192, that the principles of re judicata apply to the execution proceedings as well.

5. For the reasons recorded above both these revision petitions are allowed. The impugned order passed by Shri G. L. Goyal, Senior Subordinate Judge, Jind on 1-2 1988 is quashed and the petitioners are held entitled to the grant of physical, possession. No costs.