

(1990) 03 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 102 of 1989

Sawan Singh and Others

APPELLANT

Vs

Dharam Dutt and Others

RESPONDENT

Date of Decision : 07-03-1990

Acts Referred:

Citation : (1990) 2 ShimLC 36

Hon'ble Judges : P.C.B. Menon, C.J

Bench : Single Bench

Advocate : Kamlesh Sharma, for the Appellant; Rajiv Sharma, for D.R.S., for the Respondent

Judgement

P.C. Balakrishna Menon, C.J.—The revision petition by the decree-holder is against the order of the Executing Court dismissing the execution petition on the ground that the decree is not executable. The Petitioners obtained a decree in Civil Suit No. 240/76 for possession of a small extent of land after demolition of a wall situated in khasra No. 589. The Respondents had obtained a decree in Civil Suit No. 6 of 1974 for possession of 2 biswas of land in khasra Nos. 121/2 and 121/4. Both the decrees were put under execution and the Executing Court had passed orders for delivery in execution and warrants for delivery of possession were also issued to the Sub-Divisional Collector, Sundernagar. The Field Kanungo who went to the spot to execute the decrees submitted a report to the Executing Court that he requires police assistance to execute the warrants issued by the Court. The Executing Court thereupon addressed the District Judge, Mandi to direct the District Magistrate to give the requisite police assistance to execute the warrants. This was done in accordance with the requirements of Chapter 7-J of the Rules and Orders of the High Court of Judicature of Punjab as applicable to Himachal Pradesh. The Additional District Judge, Mandi as per his letter dated 21st December, 1988 returned the reference to the Executing Court enclosing a copy of the order of the Additional District Judge, Mandi, dated 18-9-1988 stating that the decrees are in executable. The Executing Court again requested

the learned District Judge, Mandi, to pass necessary orders for providing police assistance to the executing agency but that request was also turned down with a further communication dated 6th February, 1989 informing the Executing Court that the Additional District Judge had already decided that both the decrees are in executable.

2. The Executing Court had already passed orders for delivery of the properties covered by the respective decrees and also issued warrants to the Sub-Divisional Collector, Sunder Nagar, to effect delivery of possession. The Additional District Judge had no jurisdiction to hold that the decrees are not executable. He was only requested by a reference made by the Executing Court to direct the District Magistrate to afford the requisite police-aid to execute the decrees. That request was as per provisions contained in Chapter 7-J of the Rules and Orders of the High Court of Punjab. On such a reference made by the Executing Court, the District Judge had only to direct the District Magistrate to afford the requisite police assistance. The observations made by the Additional District Judge that the two decrees are in executable and the direction issued by the District Judge to the Executing Court to decide the execution petition in the light of the orders of the Additional District Judge are totally without jurisdiction. The Executing Court in paragraph-7 of the impugned order has stated as follows:

I have considered the respective contentions of learned Counsel for both the parties and have scrutinised the record of the case. No doubt this Court has made the reference to learned District Judge Mandi for providing police assistance and not on the merits of the case, but since learned District Judge, Mandi has directed this Court that the matter be dealt with in the light of the order dated 18-9-1988 of the learned Additional District Judge, which has been communicated to this Court, hence I have no alternative, but to dismiss those execution petitions being in executable and that was why the police assistance was not provided by the learned District Judge, Mandi. Furthermore, these executions cannot be executed for want of police assistance. File after completion be consigned to the record room.

3. Since the learned District Judge had no jurisdiction to give any such direction to the Executing Court, the decision of the Executing Court passed on such direction is clearly unsustainable. It is accordingly set aside. The execution will proceed in accordance with law. The parties will appear before the Executing Court on 27-3-1990. No costs.