
(2017) 12 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : 222 of 2017

Vijay Kumar and others

APPELLANT

Vs

Jagar Nath and others

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#), [Order 21 Rule 35](#), [Order 21 Rule 11](#), [Order 20 Rule 18](#) - Saving of Inherent powers of Court

Citation : (2017) 12 SHI CK 0031

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Y.Paul, Ashok K. Sharma, K.D. Sood, Rajnish K. Lall

Final Decision : Dismissed

Judgement

1. By way of this petition, the petitioners have prayed for the following reliefs: "It is therefore, prayed that this petition may kindly be allowed and the impugned orders dated 30.01.2014, 10.08.2015 and 25.04.2017 passed by the Ld. Civil Judge (Junior Division)-II, Hamirpur, in Civil Suit No. 229/93/R.B.T. No. 328/93 may kindly be set aside in the interest of justice and fair play.

Any other suitable relief or in the alternative as deemed just and fit by this Hon'ble Court may also be granted in favour of the petitioners."

2. I have heard the learned counsel for the parties and have also gone through the impugned orders.

3. It is not in dispute that a Civil Suit filed by respondents No. 1 and 2, i.e., Civil Suit No. 229/93/RBT No.328/94, titled Jager Nath and another Vs. Kewal Krishan and others, in which the present petitioners were defendants, stood decree in favour of respondents No. 1 and 2 by the Court of learned Civil Judge (Junior Division), Court No. 1, Hamirpur vide judgment and decree, dated 28.06.2008 in

the following terms: "In view of the discussions made above, since the issue No. a has been decided in favour of the plaintiffs, the suit of the plaintiff is decreed and accordingly I hereby pass preliminary decree of partition holding that the plaintiffs have 13/15 share over the suit land. Decree sheet be prepared accordingly. This case file after its due completion be consigned to the record room."

4. In an application so filed under Order 20 Rule 18 of the Code of Civil Procedure for making preliminary decree, dated 28.06.2008, passed in Civil Suit No. 229/93 RBT No. 328/94 as final decree and to effect partition and to deliver separate possession qua share of the plaintiffs, i.e., present respondents No. 1 and 2, the Court of learned Civil Judge (Junior Division), Court No. 2, Hamirpur, H.P. vide decision, dated 30.01.2014, passed the following order: "4. Keeping in view aforesaid discussion, a final decree of partition is hereby passed in accordance with report of Local Commissioner and shares of parties are separated by metes and bounds. Further possession would be delivered in accordance with report of Local Commissioner, which shall form part of decree. Decree sheet be drawn accordingly. File after its due completion be consigned to Record Room." Said order was not assailed by the present petitioners.

5. This was followed by passing of order, dated 10.08.2015, by the Court of learned Civil Judge (Junior Division), Court No. II, Hamirpur, H.P., on an application filed by the Decree Holders under Order 21 Rule 11 of the Code of Civil Procedure. The application including objections filed to the said application were disposed of by the learned Executing Court in the following terms: "3. I have heard contentions of learned counsel for the parties and have gone through the contents of the application, as well as reply thereto and documents annexed with the execution petition.

4. Perusal of the documents reflects that in the instant case a preliminary decree has been passed on 28.06.2008 in Civil Suit No. 229/93, RBT No. 323/94 which has been made final after which Local Commissioner was appointed who has submitted his report on dated 01.06.2013 which has been accepted by the Court. The objections raised by the non-applicants is not sustainable as the point raised by the JD has been decided by the Court on merits while deciding the suit when it has been passed as preliminary decree. It is settled law that the executing Court cannot go behind the decree. As such, I find no substance in the objections and objections raised by the JDs. are liable to be dismissed and accordingly dismissed. It be tagged with the main case file. Let warrant of possession in respect of aforementioned land be issued on taking steps within 7 days. Report be called on or before 16.10.2015. Concerned Ahlmed is directed to send copy of final decree alongwith report of local commissioner along with warrant of possession. Steps be taken within 10 days."

This order, admittedly, was also not challenged by the present petitioners.

6. Thereafter, an application was filed by the Decree Holders before the learned

Executing Court under Section 151 of the Code of Civil Procedure, which was treated by the learned Executing Court as an application under Order 21 Rule 35 of the Code of Civil Procedure, on which learned Executing Court passed the following order: "11. Thus from the aforesaid provision of law it became clear that if the judgment debtor(s) is not giving free access for executing the decree passed with regard to immovable property then the Court has power even to order the breaking of the lock for the purpose of delivering the possession of immovable property to the decree holder.

12. Thus, under the given facts and circumstances this Court is left with no other opinion but to allow the present application. Accordingly, the application under consideration stands allowed. It is hereby ordered that the warrant of possession as issued by this Court vide order dated 10.08.2015 be executed after breaking the lock of the premises in question, and after giving reasonable warning and facility to any woman, if any, not appearing in public according to the customs of the country to withdraw. Report be called for 08/06/2017. Necessary steps be taken within 3 days.

Application under consideration stands disposed of. It be registered and after due completion, it be tagged with main case file for record."

7. After the said order was passed by the learned Executing Court, present petition was filed by the present petitioners assailing all the above three orders.

8. During the course of arguments, learned counsel for the petitioner could not satisfy this Court as to why earlier orders, dated 30.01.2014 and 10.08.2015 were not independently assailed within a reasonable time.

9. Be that as it may, having heard learned counsel for the parties and having gone through the orders impugned as well as the judgment and decree passed by the learned trial Court in Civil Suit so filed by the present respondents No. 1 and 2, in my considered view, there is no infirmity with either of the orders so assailed before this Court by way of present petition.

10. The judgment and decree passed by the learned trial Court has attained finality. The preliminary decree was made final in a petition filed by the plaintiffs under Order 20 Rule 18 of the Code of Civil Procedure. Said application stood allowed by the learned Court below on 30.01.2014. Order for issuance of warrant of possession stood passed by the Executing Court as far back as on 10.08.2015. It is in this background that taking into consideration the entire aspect of the matter, learned Executing Court vide order, dated 25.04.2017, ordered that warrant of possession as issued by the said Court vide order, dated 10.08.2015, be executed after breaking the lock of the premises in question.

11. In my considered view, there is no infirmity with the orders so passed by the learned Executing Court and there is no merit in the present petition. Accordingly, the petition is dismissed. Miscellaneous application(s), if any, also stand disposed of.