



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-5855-2025 (O&M)

Date of decision :27.08.2025

PARAMJIT SINGH

... PETITIONER

VERSUS

PURAN SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ankit Gupta, Advocate
for the petitioner.

PARMOD GOYAL, J. (ORAL)

The Petitioner is aggrieved by the dismissal of his objections vide impugned order dated 08.08.2025 passed by Civil Judge (Junior Division), Hoshiarpur. Vide judgment and decree dated 28.08.2018, Court of Civil Judge (Junior Division), Hoshiarpur, had allowed the counter-claim preferred by defendants in the suit preferred by Plaintiff. Learned Court of Civil Judge Junior Division, Hoshiarpur had earlier dismissed the suit of plaintiff-petitioner for non prosecution.

2. Initially a suit for declaration was preferred by petitioner J.D., claiming himself to be owner to the extent of 1/4th share. Notice of suit was duly served upon the defendant. The defendant appeared, filed their written statement, and preferred a counter-claim seeking decree for mandatory injunction. However, the suit preferred by the petitioner was dismissed in default, whereas the counter-claim continued and was decreed in favour of the decree holder-defendant vide judgment and decree dated 28.08.2018.



3. It is the case of the present petitioner/JD that during the pendency of the suit, the matter was compromised between the plaintiff and the defendant and it was decided that none of them shall pursue their respective claims and, therefore, J.D. did not pursue his case and hence suit was dismissed in default. However, respondent/decree holder allegedly failed to fulfil their promise and continued with their counter-claim and cleverly got *ex-parte* judgment and decree in their favour.

4. That thereafter, the respondent-decree, after a lapse of 6½ years, preferred an execution petition before Executing Court. On receipt of summons from the Executing Court, the petitioner/Judgment Debtor was surprised and had had approached the Court by way of filing his objections. It is claim of the petitioner that his objections to the execution petition have been wrongly rejected. The main objection taken by the judgment debtor/petitioner was that the execution petition, having been filed after 6 ½ years, is barred by limitation as per Article 135 of Limitation Act. The limitation period to execute a decree of mandatory injunction is 3 years and, therefore, present execution petition preferred by the decree holder is hopelessly time-barred. On the other hand, the decree holder claimed that in the facts and circumstances of the present case, Article 135 of the Limitation Act has no applicability and the limitation to file the execution petition in the facts and circumstances of the present case is governed by the provisions of Article 136 of Limitation Act. Hence, the execution petition is within limitation.

5. Perusal of the judgment and decree dated 28.08.2018, whereby the counter-claim of the defendant-respondent was allowed, goes to show that plaintiff had sought declaration that he is the owner in possession of one-fourth share in the suit property whereas defendant-respondent had claimed himself to be owner of 14 marlas of the property and had claimed to have raised construction



over it. It was the case of defendant that defendant had given property to the plaintiff, being father of plaintiff, however, the plaintiff had forged the documents and filed the suit with wrong site plan. Defendant also claimed to have terminated license granted in favour of the plaintiff vide registered notice dated 11.08.2015 and claimed that after termination of the license, plaintiff was in unauthorized possession and bound to surrender vacant possession of the property. The said counter-claim preferred by defendant was duly decreed by the Court.

6. There is no dispute that learned Court of first instance had found defendant to be owner of the suit property and held that plaintiff/judgment debtor held property as licensee which stood validly terminated. Therefore, he is unauthorized possession of suit property and is liable to handover the possession of suit property to defendant.

7. The finding of Court passing decree, therefore, goes to show that, though, the suit was stated to be for mandatory injunction but actually it for seeking possession of suit property from a licensee, whose license stood canceled and was in unauthorized possession of suit property. Therefore, learned Executing Court considering the facts and circumstances in the present case and in view of judgment of Supreme Court in ***Sant Lal Jain Vs. Avtar Singh***, AIR 1985 SC 857 held that suit for mandatory injunction against licensee for possession is in fact is suit for possession though couched in the form of suit for mandatory injunction as what would to be given to plaintiff in case if he succeed is possession of property to which he has been found entitled to. Learned Executing Court had also placed reliance upon '***Gurcharan Singh and anr. Vs. Gurudwara Shri Singh Sabha***, 2004 (2) RCR (Civil) 532 wherein it was held that suit for mandatory injunction seeking directions against licensee to vacate the premises is maintainable in cases where the license has been terminated and suit for



possession is not required to be filed because licensee after termination of license loses all right, title and interest over the property. It was held that decree for mandatory injunction directing to vacate premises is direction to handover possession.

8. The learned Executing Court accordingly concluded that, in the facts and circumstances of the present case, Article 135 of Limitation Act has got no applicability and since suit was for recovery of possession, the limitation would be governed by Article 136 of Limitation Act. Article 135 and 136 are reproduced as under:-

<i>135. For the enforcement of a decree granting a mandatory injunction.</i>	<i>Three years.</i>	<i>The date of the decree or where a date is fixed for performance, such date.</i>
<i>136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.</i>	<i>Twelve years.</i>	<i>[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation</i>

9. Under Limitation Act, 1963, limitation period for Executing a decree for mandatory injunction is 3 years from the date of decree as per Article 135. Whereas under Article 136, period of 12 years for execution of other types of decree including those for recovery of possession has been prescribed. Therefore, when a decree combines mandatory injunction with possession, Courts have to



apply longer period for recovery of possession to ensure the execution of main relief. Reference to Section 39 of Specific Relief Act, is therefore required, which reads as under:-

39. *Mandatory injunctions.*-- *When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.*”

10. In ***Deep Chand and others Vs. Mohan Lal 2006 SCC 259***, the Hon’ble Supreme Court after considering provisions of Article 136 of Limitation Act has held as under:-

“..... it must, however, be remembered that the purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the decree holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree-holder to reap the fruits of his decree.”

11. In the present case, counter claim for mandatory injunction seeking possession was preferred and has been ordered. Relief granted is for possession, therefore, the limitation for execution would be 12 years and not 3 years. Article 136 of the Limitation Act shall be applicable in the facts of the present case instead of Article 135. No other issue has been raised, no fault with the order of learned Executing Court can be found, the Executing Court is bound to execute decree dated 28.08.2018 and deliver possession as execution petition is within limitation.



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12. The revision petition is accordingly dismissed having no merit.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.

27.08.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No