



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-4585-CII-2025  
WITH CM-7673-CII-2025  
IN/AND CR-185-2024 (O&M)  
Date of decision : 13.05.2025

Kuldip Singh (since deceased) thr. LRs & ors. .... Petitioners

versus

Madhu Sudan thr subsequent purchaser & ors. .... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. Vivek Suri, Advocate  
Mr. Dushyant Godara, Advocate and  
Ms. Kritika Sharma, Advocate  
for the petitioners.

Mr. K.S. Dadwal, Advocate  
Mr. Gaurav Mohunta, Advocate  
Mr. Pratyush Sood, Advocate  
Mr. Nishant Nora, Advocate  
for the respondents.

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**PANKAJ JAIN, J. (ORAL)**

**CM-4585-CII-2025**

For the reasons recorded in the application, the same is allowed.

Civil revision is restored to its original number.

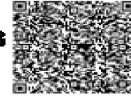
**CM-7673-CII-2025**

For the reasons recorded in the application, the same is allowed.

Documents Annexures R-1/1 to R-1/6 are taken on record.

**CR-185-2024**

1 The parties are in thick of *lis* since 1989. Plaintiff filed suit seeking possession by way of specific performance of agreement to sell dated 15.04.1972 regarding 89 kanals 7 marlas of land. The suit was decreed vide



judgment and decree dated 30.08.1996. The operative part of the decree reads as under :-

*“This suit is coming before me (SH. NIRMAL KUMAR GOYAL, PCS, CIVIL JUDGE JUNIOR DIVISION, GURDASPUR) on 30-8-1996 in the presence of Sh. Balraj Mohan Adv, Counsel for plaintiff and SH. S.P. Mahajan Adv. counsel for defendants for final disposal.*

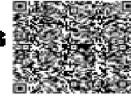
*It is ordered that present suit succeeds as such same stands decreed in favour of plaintiff against defendant no. 1 with costs. It is ordered that defendant no. 1 will execute reconveyance deed in favour of plaintiff qua suit land and will receive consideration amount of Rs. 20,000/- within period of three months from today, failing which plaintiff will be entitled to get reconveyance deed executed by way of execution. The plaintiff will also be entitled to possession of suit land after getting reconveyance deed executed as per law.”*

2 The decree was upheld in appeal. Decree holder filed execution application on 10.11.2006. The symbolic possession of the suit land was delivered. The execution application was disposed off being satisfied on the statement made by counsel for the decree holder. Order dated 15.09.2009 disposing off the execution application as satisfied reads as under :-

***In the Court of Ranjeet Kaur ACJ/SD/GSP Execution no.29 of 2006***

***ORDER***

*Execution application warrant of symbolic possession were issued & the JD also filed an application for dismissal of execution application on the ground that decree holder have sold the property and left no right title or interest in the land. Learned advocate appearing on behalf of Balraj Mohan has also stated at*



*the bar that decree holder have been given symbolic possession of the suit land and therefore, the execution application be disposed off being satisfied. In view of statement at bar, the execution application is disposed of being satisfied and therefore, now there is no need to decide the application filed by the JD. The file be considered to the record room.*

*Ranjeet Kaur ACJ/SD*

*15/9/2009”*

3 During the interregnum J.D. challenged decree against him vide RSA No.1815 of 2001. The J.D. was initially granted indulgence. Status quo regarding possession was ordered by this Court vide order dated 29.08.2002 subject to payment of mesne profits. The order passed by this Court while admitting the regular second appeal dated 29.08.2002 reads as under :-

*“Punjab and Haryana High Court*

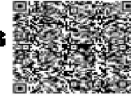
*RSA no 1815 DOI 15/05/2001*

*Admitted*

**ORDER**

*It is directed that the defendant - appellant shall deposit mesne profit during the pendency of the appeal. The amount of the mesne profits determined shall be deposited by the defendant - appellant with effect from the date of filing the suit in 4 equal installments and that mesne the profits shall be deposited after every 6 month from the commencement of the agricultural year. The amount so deposited with the trial court shall be further deposited in the nationalized bank under the orders of trial court shall be further which shall converted into FDR for the period where it shall earn the maximum rate of interest. That the execution of the degree of the trial court shall remain stayed subject to the above.*

*29/8/2002”*

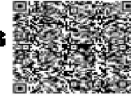


4 Interim order was vacated on 25.09.2006 after appellant-JD failed to comply with the conditions of the orders. Special leave to appeal was filed, i.e. SLP (Civil-CC) No.7069-7070 of 2007. The same was dismissed on 17.08.2007.

5 Fresh execution petition was filed by decree holder on 31.05.2021 seeking actual possession. Objections were filed by the JDs on 21.03.2022. The same were dismissed by the Executing Court passing detailed order dated 06.04.2023 (Annexure P-9). The objectors came before this Court in CR No.3381 of 2023 challenging the order dated 06.04.2023. The Civil Revision was dismissed for non-prosecution on 18.12.2023. The other set of JDs filed objections on the same lines on 07.09.2021. The same stands dismissed vide order dated 14.12.2023.

6 By way of instant revision JDs have impugned both orders dated 14.12.2023 (Annexure P-12) as well as that dated 06.04.2023 (Annexure P-9).

7 Mr. Vivek Suri, Advocate for the petitioners while assailing the dismissal of objections at the hands of JD has raised two fold submissions. He submits that in view of the fact that the earlier execution petition filed by decree holders was disposed off as satisfied and that too on the statement made by counsel for decree holder, the second application for execution is not maintainable. He further submits that where a decree holder and JD are co-sharers, the decree for possession can be executed by delivering symbolic possession only. In order to hammer-forth his contentions, he relies upon ratio of law laid down by Supreme Court in *Shew Bux Mohata & anr. Vs. Bengal*



***Breweries Ltd. & ors., 1961 AIR (SC) 137*** and order passed by this Court in ***Gajender Singh Vs. Jai Chand & anr., 2014(3) PLJ 629.***

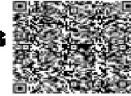
8            *Per contra* Mr. K.S.Dadwal, Advocate and Mr. Gaurav Mounta, Advocate appearing for the decree holder-respondents submits that from the record, it is evident that at the time the warrant of possession was issued in the first execution application, the land was ‘*gair mumkin*’ as crop was standing on land. After the matter was reported to the Court, warrant for symbolic possession was issued. Decree being for possession, decree holders were within their right to maintain second petition for execution of the decree for actual physical possession. Reliance is being placed upon ***Iqbal Singh Vs. Jagdish Singh & ors., 1991(1) RRR 516, Smt. Ajit Kaur Vs. Mandir Jhok Hari Har, 1988(2) PLR 636, Ghanashyam Das Mour Agarwalla Vs. Fatik Chandra Das, 1957 AIR (Assam) 123*** and ***Abdul Hamid Vs. Prokash Chandra Nandi AIR 1934 Calcutta 793***

9            I have heard learned counsel for the parties and have gone through the records of the case.

10           Evidently the decree under execution is for possession of the land and not for symbolic possession. Order XXI Rule 35 CPC reads as under :-

*“35. Decree for immovable property.—(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.*

*(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and*



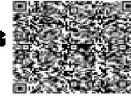
*proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.*

*(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”*

11 Order XXI Rule 35 CPC contemplates two different situations. It is amply clear that decree for symbolic possession and decree for possession are two different species and have to be executed for different results. The fruits borne by each is different. Decree for possession cannot be construed as decree for symbolic possession. Thus the same has to be executed by delivery of possession as prescribed and not by symbolic possession.

12 Supreme Court in the case of *Shew Bux Mohata's case supra* observed as under :-

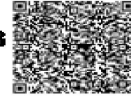
*“20. It is not in dispute that if the decree was once executed against defendant No. 4 in full, then it cannot be executed over again, regarding premises No. 27. In other words, if possession had been fully delivered to the decree-holders in execution of the decree on October 1, 1948, the decree must have been wholly satisfied and nothing remains of it for enforcement by further execution. The decree was for khas possession and under Order 21, Rule 35 of this Code in execution of it possession of the property concerned had to be delivered to the decree-holders, if necessary, by removing any person bound by the decree who refused to vacate the property. The records of the proceedings show that such possession was delivered.*



*Defendant No. 4 was the party in possession and bound by the decree. With regard to defendant No. 4, the order made on September 8, 1949 states, "Possession so far as regards the Bengal Breweries are concerned, delivered." This is an order binding on the decree-holders. It has not been said that this order was wrong nor any attempt made at any time to have it set aside or to challenge its correctness in any manner. The same is the position with regard to the order of November 22, 1948, recording on the Nazir's return that possession had been delivered in terms of the writ.*

*21. The order of September 8, 1949, no doubt further states, "Ordered that the execution case be dismissed on part satisfaction." The words "part satisfaction" in this order, however, clearly do not refer to part satisfaction as against defendant No. 4, the Bengal Breweries, for the order expressly states, "possession so far as regards the Bengal Breweries are concerned, delivered". The decree had therefore been satisfied in full as against the Bengal Breweries Ltd. and consequently as regards premises No. 27 in its possession. Even the learned Subordinate Judge who held the execution maintainable found that "the decree-holders had no doubt previously got possession." Notwithstanding this, the learned Subordinate Judge decided that the decree could still be executed as he took the view that at the hearing before the High Court on January 21, 1949, defendant No. 4 "must have ignored the delivery of possession by the Naib Nazir and he cannot now be heard to say that the delivery of possession by the Naib Nazir was legal and valid." For reasons to be stated later, we are unable to agree with this view.*

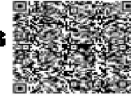
*22. It is true that the Nazir's return showed that defendant No. 4 had not been bodily removed. But the same return also shows that it had not been so removed because of certain arrangement arrived at between it and the decree-holders and as the decree-holders had not required the removal of defendant No. 4 from the premises. Now under Order 21, Rule 35 a person in possession and bound by the decree has to be removed only if necessary, that is to say, if*



*necessary to give the decree-holder the possession he is entitled to and asks for. It would not be necessary to remove the person in possession if the decree-holder does not want such removal. It is open to the decree-holder 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 decree-holders 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 decree-holders 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 Jagadish Nath Roy v. Nafar Chandra Parmanik, 35 Cal WN 12, an exactly similar thing had happened and it was held that the decree was not capable of further execution. It was there said a. p. 15 (of Cal WN).*

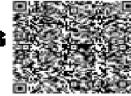
*"The case, therefore, seems to me to be one of those cases in which a decree-holder having armed himself with a decree for khas possession executes that decree in the first instance by obtaining symbolical possession only with some ulterior object of his own, and thereafter subsequently and as a second 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."*

*We entirely agree with the view that was there expressed."*



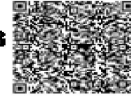
13           The aforesaid observations made by Supreme Court were relied upon by this Court in the case of *Smt. Ajit Kaur's case supra* in a case pertaining to land under crop to observe as under :-

*“5. The entire approach of the learned executing Court is erroneous. He committed a patent illegality by refusing to entertain the second execution application on the ground that previous execution application having been dismissed in default and it was allowed to be so done because the decree holder was satisfied with the symbolic possession. The conclusion is not warranted by any logic, evidence, or law for the following reasons; (a) there is not an iota of evidence that the decree holder consented to obtain symbolic possession in lieu of actual physical possession; (b) it passes human comprehension that the decree-holder who fought the legal battle for more than a decade and succeeded in getting a decree for possession from the highest Court in the State will be satisfied with symbolic possession only; (c) the inference drawn by the executing court is irredeemable. Non appearance of the decree-holder on the date fixed in the executing court cannot lead to a conclusion that she was satisfied with symbolic possession only. To the contrary, she may be aware that the second execution application has to be filed for obtaining actual physical possession since the land at the time of delivery of symbolic possession was under crops and actual possession cannot be delivered till the crop is cut or compensation as assessed for the standing crop was deposited in the Court. The consent for taking symbol possession in lieu of actual physical possession, if any, has to be given in the executing course; (d) the manner in which the file containing warrants of possession was misplaced speaks for itself. It appears that every effort was afoot to deprive the decree-holder of the fruits of the decree; (e) it is invaluable that what was got by the decree-holder after fighting a tough legal battle for a decade will be offered to the judgment debtors in a plate; and (f) in view of what is being propounded in these proceedings, there was no difficulty for the judgment-debtor to*



*request the executing court to record the statement, of the decree-holder that she is satisfied with the symbolic possession alone.*

*6. In the instant case, the original warrant of possession issued by the executing court could not be produced as the file containing the warrants of possession was not traceable. The report roznamcha is the only document which reveals that only symbolic possession was delivered, may or may not with the consent of the decree-holder. Even if the symbolic possession was given with her consent, it will not amount to the satisfaction of the decree. In this view of the matter, I hold that there was no bar to the maintainability of the second execution application. The learned executing Court has refused the prayer relying upon a judgment given by this Court reported as **Niranjan Singh v. Remeshwar Singh and another, 1977 P.L.J. 267**. The brief facts of that case may be noted. The plaintiff filed a suit for possession of agricultural land. The suit was decreed and symbolic possession was delivered. In the meantime, consolidation proceedings took place in the village. the decree-holder got symbolic possession of the pre-consolidation field numbers and filed a suit for possession of post-consolidation field numbers on the strength of the decree passed in his favour. The suit was decreed by the learned trial Court but on appeal the decree was reversed and it was held that Section 47 of the Civil Procedure Code barred the maintainability of the second suit. In second appeal, this Court held that Section 47 of the Civil Procedure Code did not bar the maintainability of the second suit and reversed the decree of the first Appellate Court and restored that of the trial Court whereby the suit of the decree-holder was decreed for possession of the land which was allotted during consolidation. This case on facts is wholly distinguishable and has got no relevancy to the point in controversy in the present case. This Court only held that Section 47 of the Code does not bar the maintainability of the second suit. In this judgment there was no occasion for this Court to dilate on the question whether the second execution application was maintainable or not when in the first execution application only symbolic possession was*

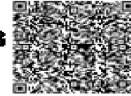


*delivered when the decree was for actual physical possession . This question directly arose for consideration in the judgment reported as **Daljit Singh and another v. Nand Ram and others, 1967 C.L.J. 712.** Relying (sic) Supreme Court decision reported as **Shew Bux Mohata and another v. Bengal Breweries Limited and others, AIR 1961 Supreme Court 137,** this Court held as under :-*

*"It is undisputed that if a decree is granted for possession of the land the same cannot be said to be have been fully satisfied, if the decree-holder is only granted symbolical possession of that land, unless of course at the time of the delivery of symbolical possession the decree-holder expressly or even impliedly contents to the delivery of symbolical possession in full satisfaction of the decree."*

14           The aforesaid view has been further followed in ***Iqbal Singh's case supra*** to observe as under :-

*"4. Mr. H.L. Sarin, appearing for the judgment-debtor relying upon **Niranjan Singh v. Rameshwar Singh and another, 1977 PLJ 267; Jaimal Singh Dasaundha Singh v. Rakha Singh and another, AIR 1957 Punjab 17; Mst. Mewa and others v. Amar Singh and others, 1958 PLR 249 and Bishan Singh v. Hukan Chand and others, 1989(2) RRR 187 (P&H) : 1989(1) RRR 597 (P&H) : 1989 PLJ 380,** sought to contend that once symbolic possession of the land had been granted and the application is consigned as fully satisfied, no subsequent application for actual physical possession at the instance of the decree-holder is maintainable. The answer to this is, however, provided by the recent judgment of this Court in **Ajit Kaur v. Mandir Jhoke Hari Har and others, 1989(1) Current Law Journal 65,** where a similar point had been canvassed. There too, in execution of a decree for possession of land only symbolic possession was given to the decree-holder as the land was under crops and was gair mumkin. The execution application was thereafter dismissed in default. The dismissal of the application in default was sought to be construed as satisfaction of the decree*



*holder with merely symbolic possession of the land. It was held that even if symbolic possession had been given with the consent of the decree-holder, it would not amount to satisfaction of the decree and consequently a second execution application for obtaining actual possession was thus not barred. All the authorities cited by the counsel for the petitioner here were noticed and distinguished.”*

15 In view of the aforesaid ratio where the decree is for possession and it is only symbolic possession that has been delivered owing to some reason beyond the control of decree holder, even if the symbolic possession is given to decree holder with his consent, the same shall not amount to the satisfaction of the decree. In the present case, it is matter of record that when the warrant of possession was initially issued the same was received back with the report that there is “*wheat crop standing on the spot*”. Accordingly, warrant of symbolic possession was issued for 24.01.2009 vide order dated 03.01.2009. So being the case, the issue is squarely covered by ratio of law laid down in *Ajit Kaur’s case supra*. Dismissal of earlier execution petition as satisfied after delivery of symbolic possession cannot be held to be a bar to the maintainability of second execution application.

16 In view of above in the considered opinion of this Court, the objection raised by Mr. Vivek Suri, Advocate for the petitioners regarding maintainability of the second execution application cannot be sustained. The same *sans* merit and is hereby rejected.

17 So far as the plea with respect to JD and decree holders being co-sharers is concerned, the Vendor, i.e JD agreed to sell specific khasra numbers by way of agreement to sell to the decree holders. Suit was filed for possession of the land under agreement to sell. The suit for possession was decreed. The



decree now stands maintained by this Court in RSA No.1815 of 2001 decided on 05.02.2025 titled as ***Kuldip Singh & ors. Vs. Madhu Sudan & ors., Annexure A-1*** observing as under :-

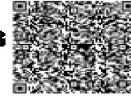
*“4.3 It is evident that there are three exceptions attached to applicability of Section 25 of the 1872 Act. The second part of the first exception provides that if an agreement is made on account of natural love and affection between the parties standing in a near relation to each other, then Section 25 will not be applicable. As is evident, the parties are closely related. Sh. Madhu Sudan is nephew of Sh. Prakash Singh, hence, the argument of learned counsel for the appellant based on Section 25 has no substance.*

*4.4 Moreover, it is the case of the plaintiff that he is prepared to pay Rs.20,000/-, which was the amount of sale consideration in the sale deed dated 11.12.1968. Both the Courts have passed a conditional decree for specific performance of the agreement of payment of Rs.20,000/-. Failure to refer to the amount of consideration in the agreement dated 15.04.1972 will lose its significance particularly keeping in view the relation between the parties.*

*4.5 With respect to the effect of non-registration, it may be noted that agreement dated 15.04.1972, is only a promise to re-convey property in favour of Sh. Madhu Sudan on his attaining the majority. Such agreement does not require registration.*

*4.6 The attention of the Court has not been drawn to any provision, which requires registration of an agreement in the year 1972.*

*4.7 Two connected revision petitions are also listed.*



4.8 CR-5065-2007 has been filed against dismissal of objections in the execution petition. The objections were filed by the judgment debtors. Those have been correctly dismissed by the Executing Court.

4.9 In CR-5066-2007, the Executing Court has assessed the mesne profits for continuous occupation of the property by the appellants. While entertaining the revision petition, the appellants were directed to pay the amount, however, they failed to pay the same. The stay order passed in favour of the appellants was also vacated on 25.09.2006. The order vacating the stay was assailed before the Supreme Court by the appellants, but failed.

**5. Decision:-**

17. Keeping in view the aforesaid facts, all the three cases i.e. one regular second appeal as well as two civil revision petitions are dismissed.”

18 Even though the decree holders despite there being sale of specific khasra number shall attain the status of being co-sharers in the joint holding, but JD cannot be allowed to enjoy the property taking refuge under Order XXI Rule 58 CPC after suffering decree for possession. Decree Holders being entitled to fruit of decree are entitled to possession and not mere symbolic possession.

19 Finding no merits in the present revision petition, the same is ordered to be dismissed.

**( PANKAJ JAIN )  
JUDGE**

**13.05.2025**  
Pooja Sharma-I

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No