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

CR-1792-2025 (O&M)

Date of Decision: 08.04.2025

Jyoti

....Petitioner

Versus

Darshana Rani (Now Deceased) Through LRs and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Jagtar Singh Sidhu, Advocate for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present petition has been preferred under Article 227 of the Constitution of India assailing the order dated 03.02.2025 passed by the Court of learned Civil Judge (Junior Division), Jalandhar vide which the application under Section 144 of the Code of Civil Procedure, 1908 (for short 'CPC') for restitution of possession was allowed.

2. The facts, as emanating from the revision petition, are that the petitioner/plaintiff (Jyoti) filed a civil suit against the respondents/defendants for declaration to the effect that she was the owner of house bearing No.481 situated at Gandhi Camp, Jalandhar (hereinafter referred to as the 'suit property') on the basis of a Will dated 27.01.2000 executed by one Late Sh. Mangal Dass in favour of the petitioner/plaintiff. Relief of possession of the suit property with consequential relief of permanent injunction was also sought. The case set up by the petitioner/plaintiff was that Mangal Dass was the brother-in-law (*Jeth*) (husband's brother) of the petitioner/plaintiff and was owner in possession of the suit property. He was survived by his three daughters (respondents/defendants). The wife of Mangal Dass and thereafter the petitioner/plaintiff served Mangal Dass in every respect. She also assisted Mangal Dass in bringing up the

respondents/defendants and in solemnizing their marriages. As such, Mangal Dass executed a Will dated 27.01.2000 in favour of the petitioner/plaintiff. Since the respondents/defendants had forcibly taken over the possession, the suit was filed.

3. The respondents/defendants, as per the record, did not appear despite service and were accordingly proceeded against *ex parte*. *Ex parte* judgment and decree in favour of the petitioner/plaintiff was passed on 01.09.2011.

4. An application under Order IX Rule 13 CPC was filed by the respondents/defendants, which was allowed on 06.04.2017 by the Court of learned Civil Judge (Junior Division), Jalandhar.

5. In the meantime, on the basis of the judgment and decree dated 01.09.2011, an execution petition was preferred by the petitioner/plaintiff and possession of the suit property was delivered to her. After the application under Order IX Rule 13 CPC was allowed, the main suit was dismissed vide judgment and decree dated 02.01.2024 whereafter an application under Section 144 CPC was filed for restoration of possession. This application was allowed by way of the impugned order and warrants of possession were issued, leading to the filing of the present revision petition.

6. I have heard learned counsel for the petitioner.

7. Learned counsel for the petitioner submits that the Court concerned has gravely erred in allowing the petition under Section 144 CPC. He submits that though an appeal against the judgment and decree dated 02.01.2024 vide which the suit was also dismissed, the regular second appeal is pending. He submits that till the question of title was not decided, the possession could not have been restored.

8. In support of his contentions, learned counsel places reliance upon the judgment passed by the Supreme Court of India in the case of '***Murti Bhawani Mata Mandir Represented Through Pujari Ganesh Lal (Dead) Through Legal***

Representative Kailash Vs. Ramesh and Others, (2019) 3 SCC 707 as also the judgment passed by the Andhra Pradesh High Court in the case of '*Hiranand and Anr. Vs. T.N. Khambati and Ors.*', 2005 (29) RCR (Civil).

9. I have considered the submissions made by learned counsel for the petitioner/plaintiff but find the same to be devoid of merit.

10. Section 144 CPC lays down as under:

“Section 144 CPC: Application for restitution-

(1) Where and in so far as a decree (or an order) is (varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order) shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree (or order) or (such part thereof as has been varied, reversed, set aside or modified) and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly (consequential) on such variation, reversal, setting aside or modification of the decree or order).

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).”

11. Now reverting to the facts, the *ex parte* judgment and decree was passed on 01.09.2011. In the execution petition filed by the petitioner/plaintiff, possession of the suit property was delivered to the petitioner/plaintiff. Thereafter, application under Order IX Rule 13 CPC was allowed on 06.04.2017 and the *ex parte* judgment and decree was set aside. The suit was restored to its original number and was tried. The said suit was dismissed on merits vide judgment and decree dated 02.01.2024 (Annexure P-1). It, therefore, means that the original judgment and decree dated 01.09.2011, on the basis of which, the execution petition had been filed and possession had been obtained was reversed/set aside. That being so, the petition under Section 144 CPC was duly maintainable. The

argument that the petition under Section 144 CPC was not maintainable without the decision on the question of title is fallacious for, originally the possession was with the respondents/defendants only and the same had been obtained from them by the petitioner/plaintiff pursuant to judgment and decree dated 01.09.2011 which was subsequently set aside.

12. The Court of learned Civil Judge (Junior Division), Jalandhar, dealt with the matter in accordance with law and rightly allowed the petition under Section 144 CPC:

“6. Original Execution file was summoned and was received. From the perusal of file, it reveals that the applicant Jyoti had filed civil suit for declaration and possession against Darshna Rani and others and vide judgment and decree dated 01.09.2011, civil suit titled as Jyoti vs Darshana Rani and others was decreed exparte by the Court of Sh. Ajit Pal Singh, the then learned Civil Judge (Jr. Div.) Jalandhar. Further perusal of the above mentioned judgment and decree dated 01.09.2011 reveals that suit was decreed in favour of plaintiff for possession of the property in dispute as exclusive owner and the defendants were restrained from alienating the suit property and from interfering illegally and forcibly, in any manner whatsoever. Thereafter, on the basis of said judgment and decree dated 01.09.2011, plaintiff Jyoti filed execution petition and in the said execution application, possession of the property in dispute was delivered to the plaintiff/decree holder and execution petition was dismissed as withdrawn being fully satisfied. Thereafter, defendant Darshana Rani filed an application under Order IX Rule 13 CPC, which was allowed vide order dated 06.04.2017 and vide which exparte judgment and decree dated 01.09.2011 passed in civil Suit No.84 of 2008 was set aside. Thereafter, main suit bearing CS No.84 of 2008 was dismissed vide judgment and decree dated 02.01.2024. Now the present application under Section 144 read with Section 151 of CPC has been filed by applicant.

7. From the perusal of entire record, it is coming out that initially an exparte judgment and decree dated 01.09.2011 passed in favour of plaintiff (present respondent) and against defendant (present applicant) and on the basis of said Judgment and decree dated 01.09.2011, execution application was allowed and possession of suit property was handed over to the plaintiff (present respondent).

Again defendant (present applicant) filed an application under order IX Rule 13 CPC vide which said judgment and decree dated 01.09.2011 was set aside and after that the defendant (present applicant) joined proceedings of main suit and main suit bearing CS No.84 of 2008 was restored and trial commenced. Thereafter, vide judgment and decree dated 02.01.2024, said main suit was dismissed. Meaning thereby the parties have reverted back to their original position, as they were before the passing of the exparte judgment and decree dated 01.09.2011, vide which plaintiff (present respondent) was declared in possession as exclusive owner of suit property and defendants were restrained from alienating the suit property and from interfering illegally and forcibly, in any manner whatsoever and possession of suit property was handed over to the plaintiff (present respondent) in the execution application. Ahlmad has reported that no stay order has been received from Hon'ble Punjab and Haryana High Court as well as Ld. Appellate Court in this case, till today. The application stands disposed of accordingly.

Accordingly, let warrants of possession of the property in dispute be issued for 03.03.2025.”

13. Another fact which has come on record is that the appeal filed by the petitioner/plaintiff against the judgment and decree dated 02.01.2024 was also dismissed and now both sides are in appeal before the High Court. Eventually of course, parties shall abide by the decision of the Courts. However, at the cost of repetition, it is reiterated that once possession had been obtained in execution proceedings instituted pursuant to judgment and decree dated 01.09.2011 and the said judgment and decree was set aside and the suit was also dismissed, possession was liable to be restored.

14. I have gone through the judgments relied upon by learned counsel for the petitioner. In the case of '*Murti Bhawani Mata Mandir Represented Through Pujari Ganesh Lal (Dead) Through Legal Representative Kailash Vs. Ramesh and Others*' (supra), a suit for permanent injunction had been filed on behalf of the deity situated in the appellant Temple against the respondents/defendants restraining them from interfering with the possession of the petitioner/plaintiff

over the suit property. The suit was dismissed on the ground that the petitioner/plaintiff had failed to prove possession over the suit land. The first appeal as also the second appeal were also dismissed. An application under Section 144 CPC was filed by the respondents/defendants for restoration of possession. This application was dismissed by the Executing Court but the first appeal was allowed and the case was remanded. The second appeal was dismissed by the High Court. The Supreme Court of India allowed the appeal and held that the interim order of the trial Court did not require the defendant to hand over the possession to the plaintiff and there was no decree or order of the trial Court by virtue of which the appellant was given possession of the property. It was held that under the circumstances, the provisions of Section 144 CPC were not attracted. There is absolutely no quarrel with the aforesaid proposition. However, the facts in the present case are totally different as in the present case, there was a decree, pursuant to which possession was obtained by the petitioner/plaintiff in execution proceedings and subsequently the decree was set aside.

15. In the case of '*Hiranand and Anr. Vs. T.N. Khambati and Ors.*' (supra) also, a suit for permanent injunction had been filed and *ad interim* injunction was granted. Thereafter, the suit was dismissed in default. No steps were taken for restoration of the suit. An application was filed by the respondents for removal of construction made by the petitioner under the guise of *status quo* orders and the subsequent temporary injunction orders. It was under these circumstances that it was held that a petition under Section 144 CPC would not be maintainable. It was clearly held that in the absence of a decree or order passed by a Competent Court of law which was varied or reversed, a Section 144 CPC application would not be maintainable. This judgment is also not applicable to the facts of the present case.

As a consequence of the aforesaid discussion, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pending application(s), if any, also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

08.04.2025

Prince Chawla

Whether speaking/reasoned :
Whether reportable :

Yes/No.
Yes/No.