

237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:101384



CR-628-2019 (O&M)

Date of Decision: 06.08.2025

DEVI DAYAL SINCE DECEASED THROUGH HIS LEGAL HEIRS
... PETITIONERS

VERSUS

VIJAY PAL AND OTHERS

... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE PARMOD GOYAL

Present:- Mr. Ravinder Malik, Advocate for the petitioners.
Mr. Sumit Gupta, Advocate for respondent Nos.1&2.

* * *

PARMOD GOYAL, J. (ORAL)

Present revision petition has been preferred by petitioner-decree holder being aggrieved by the impugned order dated 06.09.2018 passed by the Court of learned Addl. Civil Judge (Senior Division) Karnal vide which application preferred by decree-holder under Order 21 Rule 97, 98, 101, 102 CPC was held not maintainable and the same was dismissed being devoid of merits.

2. The facts in the present case are not in dispute. Plaintiff-decree-holder had preferred a suit for specific performance against respondent-defendants which was decreed vide judgment and decree dated 30.04.2015 passed by the Court of learned Addl. Civil Judge (Senior Division) Karnal. Defendants were ordered to execute the sale deed within a period of one month failing which plaintiff was given liberty to get sale deed executed in accordance with law. It was further ordered that after execution of sale deed, the plaintiff may get actual/physical possession by getting the demarcation

done.

3. For execution of judgment and decree dated 30.04.2015, the decree-holder plaintiff had preferred an execution petition and in the said execution petition, defendants were ordered to execute the sale deed and defendants voluntarily had executed the sale deed.

4. After execution of sale deed, decree-holder moved an application for getting actual physical possession of suit property. However, the said application for physical possession was dismissed by the Executing Court on the ground that sale deed was executed qua share and since particulars of 4 boundaries were not given and the agreement for sell was agreement for share only, therefore, physical possession cannot be delivered. It was noted that even revenue authorities have reported that in the absence of particulars of boundaries of suit property, physical possession cannot be delivered. It was asserted that since symbolic possession has already been delivered at the time of execution of sale deed, therefore, the decree-holder is not entitled to actual possession and his application for actual possession was dismissed.

5. Learned counsel for the petitioner has challenged the impugned order dated 06.09.2018 at twin grounds: 1) that the Executing Court cannot go beyond the judgment passed by the Court passing decree, as since the Court had ordered that actual physical possession shall be delivered to plaintiff after demarcation, the Executing Court was bound to get physical possession to the plaintiff-decree holder; 2) that the learned Executing Court has erred in concluding that the sale was for specific portion and has wrongly referred to agreement-to-sell as well as sale deed executed by JDs in favour of decree-holder wherein property has been duly described.

6. Learned counsel for the respondent has for some time opposed the contentions raised by learned counsel for the petitioner but he fairly admitted that the sale deed was executed in favour of decree-holder by JDs of their own and they are left with no interest in the property.

7. On consideration, I find that the learned Executing Court has erred in passing order dated 06.09.2018 by denying physical possession to decree-holder. The learned Court of First Instance while passing judgement and decree dated 30.04.2015 had clearly granted relief of possession to the decree-holder by noting that physical possession be handed over to decree-holder after getting the demarcation. Therefore, the Executing Court has erred in denying physical possession against the orders passed by the Court passing the judgement and decree dated 30.04.2015. The order passed by the Executing Court dated 06.09.2018 is clearly beyond the judgement and decree and beyond the jurisdiction of Executing Court. The Executing Court was bound to deliver physical possession to petitioner. Moreover, learned counsel for the petitioner has rightly pointed out that properties stand fully described in agreement-to-sale as well as sale deed executed by JDs in favour of decree-holder.

8. A perusal of sale deed clearly describes north, south, east and west of the suit property, its measurement as well as Khewat and Khasra number where the suit property is situated. Suit property measure 250 Sq. Yards. The suit property is situated in Vikas Colony Ranwar Road, Karnal within Municipal Committees Karnal. It is bounded by passage on two sides and dimensions have also been mentioned. From sale deed as well as from agreement, it is clear that specific portion of suit property was sold measuring 250 Sq. Yards bounded by other property.

9. In these circumstances, on the basis of demarcation, actual possession ought to have been given by Executing Court. It is the duty of Revenue authorities to identify suit property as per agreement-to-sell/sale deed by making correct and proper demarcation of suit land and land bounding it.

10. In view of the above, the impugned order dated 06.09.2018 cannot be sustained and hereby set aside. Revision petition is allowed. The execution shall be taken up by the Executing Court and actual physical possession of suit property as per sale deed/agreement-to-sell shall be delivered to the decree-holder after due demarcation. Since the matter pertains to the year 2015, the Executing Court shall make all endeavour to conclude the execution proceedings expeditiously.

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

06.08.2025
Janki

(PARMOD GOYAL)
JUDGE

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