

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1350 of 2013
Date of decision February 28, 2013

Dhian Singh s/o Shri Rijha Ram

..... Appellants

Versus

Atma Ram s/o Shri Rijha Ram

..... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present:- None.

K. Kannan, J (oral).

1. The revision is against the order rejecting an objection taken by the judgment debtor in an execution petition filed by the decree holder for issuing a warrant of possession. The contention of the judgment debtor in his application setting out his objection is that he has purchased two Kanals of land pending the suit and has since become a co-owner with the decree holder and therefore only symbolic possession could be granted. It is urged by him that the appropriate remedy would be only to sue for partition of the property and get actual physical possession of the share allottable to the decree holder. The Executing Court has rejected the objection given by the judgment debtor and has observed that his own purchase is hit by lis pendens and consequently the decree holder cannot be fettered in his right to execute the decree which has been confirmed up to the decision of the High Court in Regular Second Appeal.

2. Both the reasons are not strictly correct. If the judgment debtor has purchased a fraction of share of the suit property and has become co-owner with the decree holder, the sale will not become invalid but the question would still be whether the purchase by him is from a person who has ownership in respect of the property and whether he had become co-owner of the property with the decree holder. The decree, however, for recovery of possession ought to operate to its logical end in execution and if the petitioner as judgment debtor would contend that the remedy of the decree holder would be only to sue for partition, it should be more applicable to him than to a decree holder who has secured a decree for recovery of possession. It is quite unnecessary for a plaintiff to be impeded at the execution stage and move a suit for partition afresh. On the other hand, the judgment debtor who has suffered a decree for recovery of possession ought to deliver up possession in furtherance of the decree that he has suffered. If the judgment debtor has acquired any right subsequent to the suit or the decree which was not brought before the Court before the decree was passed, the remedy shall be to move his own suit for partition by means of an independent action. The issue of whether the sale is valid and whether the property purchased by him is partible will be issues that will be brought up for consideration in an independent suit. As of now, the decree holder is entitled to execute the same. If there is any further obstruction for execution, the decree holder is entitled to invoke Order 21 Rule 98 CPC and seek for coercive process against the judgment debtor in the manner contemplated by law.

2. The revision is dismissed but the judgment debtor will be entitled to resort to independent proceedings in the manner referred to above.

(K. KANNAN)
JUDGE

February 28 , 2013
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