

**HIGH COURT OF PUNJAB AND HARYANA**

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

**Date of Decision: 13.02.2024**

CR-1372-2023 (O&M)

**JASWINDER KAUR @ RASHPAL KAUR ...Petitioner**

**VERSUS**

**GURBACHAN SINGH MEHAT AND OTHERS ...Respondents**

**Legislation and Rules:**

Article 227 of the Constitution of India

**Subject:** Revision petition challenging the orders passed by the Additional Civil Judge in an execution petition related to the possession of land, alleging fraud in obtaining the decree and claiming rightful possession based on family ties to the original landowner.

**Headnotes:**

Challenge to Execution of Decree and Possession Orders – Petitioner Jaswinder Kaur @ Rashpal Kaur challenges orders passed by the Additional Civil Judge regarding possession of land, alleging fraud in decree and claiming possession based on family ties to the original landowner, Najar Singh. [Para 1, 2]

Background and Allegations of Fraud – Petitioner claims continuous possession of land since 1978-79, asserting that the decree was fraudulently obtained and that she is the cousin of the legal heirs of Najar Singh, the original landowner. Respondents counter, claiming rightful ownership through a Will executed by Najar Singh and lawful transfer of property. [Para 2, 4]

Executing Court's Findings – Executing Court dismisses petitioner's objections as vexatious and frivolous, issuing warrants of possession with

police help. The court finds no substantial evidence supporting petitioner's claim of possession or relation to Najar Singh. [Para 3, 7]

High Court's Analysis and Decision – High Court finds no merit in the revision petition. The claim of fraud in obtaining the decree is not supported by substantial evidence, and the relationship with Najar Singh is not adequately proven. The court affirms the Executing Court's orders, dismissing the revision petition. [Para 7, 8]

Referred Cases: None.

Representing Advocates:

Mr. Sunil Garg for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate with Mr. Robin Gill for respondents No.1 and 2.

ALKA SARIN, J.

1. The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 17.02.2023 (Annexure P-5) passed by the learned Additional Civil Judge (Senior Division), Phagwara whereby the objections of the petitioner have been dismissed as well as the order dated 17.02.2023 (Annexure P-6) vide which warrants of possession along with Police help have been issued.
2. The brief facts relevant to the present lis are that the petitioner objector filed her third party objections in the execution petition filed by the respondents stating therein that the decree had been obtained by playing fraud and that the judgment and decree dated 17.01.2007 passed by the Trial Court and the judgment and decree dated 18.04.2009 passed by the First Appellate Court are in-executable. It was further averred that the petitioner objector is in peaceful, lawful and long continuous possession of land measuring 68 Kanals and 5 Marlas. It is further the averment in the objections that the actual owner of the land was Najar Singh, real uncle of the petitioner-objector. Najar Singh was permanently settled in Canada and died on 12.11.1998. After his death, the land was mutated vide mutation No.2413 in favour of the sons (Gurwinder

Singh and Gurbachan Singh) and daughters (Surinder Kaur and Surjit Kaur) of Najar Singh who are now reflected as owners in the revenue records. The above-said legal heirs of Najar Singh have expired in Canada without leaving any heirs and the petitioner-objector being the cousin of the legal heirs of Najar Singh was entitled to safeguard the estate of the deceased owners. Neither the decree holder nor judgment debtor nor any other person had any right, title or interest in the property. Reliance was placed on a certificate of the Gram Panchayat.

3. In reply the decree holder-respondents stated that they had appointed a power of attorney namely, Chuhar Singh, who further appointed Lovedeep Kaur as his power of attorney. It was denied that the decree was obtained by playing a fraud or it was not executable. The possession of the petitioner-objector was denied. The relationship, as alleged, of the petitioner-objector with Najar Singh was also denied. It was admitted that Najar Singh was residing in Canada and expired on 30.07.1998 and not on 12.11.1998. It was admitted that the subject matter of the suit was mutated in the name of Gurbachan Singh, Kleminder Singh, Surjit Kaur and Surinder Kaur vide mutation No.2413. It was further submitted that Najar Singh during his lifetime executed one Will dated 26.09.1989 in favour of his two sons qua the entire land. One Amarjit Singh Samra, judgment debtor No.1, illegally got sanctioned the mutation of the property of Najar Singh on the basis of inheritance by producing a false attorney. Amarjit Singh Samra further sold 20 Kanals of the suit property in favour of Bahadur Singh and others by using the false power of attorney despite the fact that Gurbachan Singh and Kleminder Singh had moved an application before the Sub-Registrar, Phagwara for restraining Amarjit Singh Samra from executing the sale deed. In the meantime the judgment debtor had managed to get forcible possession of the property. A suit was filed by Gurbachan Singh and Kleminder Singh on the basis of the Will executed by Najar Singh. Ultimately the suit was decreed and they were held to be the owners of the entire property. Mutation in the sale deed of 20 Kanals executed by Amarjit Singh Samra was set aside. Thereafter, an appeal and a cross-appeal were filed. In the cross-appeal relief of possession was sought which had earlier been left out. The cross-appeal was allowed and the appeal filed by the judgment debtor was dismissed. The property was sold to Pritam Kaur vide sale deed dated 29.03.2019 and Pritam Kaur transferred the property to Surinder Kaur Aulakh. It was further contended that the ownership now vests with Surinder Kaur. It was further stated in the supplementary reply that the petitioner-objector is the real sister

of judgment debtor No.1 namely, Amarjit Singh Samra, who was trying to obstruct the delivery of possession in connivance with the petitioner-objector. The Executing Court vide order dated 17.02.2023 dismissed the objections filed by the petitioner herein as being vexatious, frivolous and passed a separate order dated 17.02.2023 issuing warrants of possession of the suit property with Police help. Aggrieved by the same the present revision petition has been filed.

4. Learned counsel for the petitioner would contend that the petitioner has been in possession of the suit land since 1978-79 which was clearly proved by the certificate issued by the Gram Panchayat. It is further the contention that the said certificate can be proved by leading cogent evidence, however, the Executing Court has not framed any issues on the objections. Learned counsel for the petitioner would further contend that the petitioner is a relative of Najar Singh who has since died and that the decree has been obtained by fraud. It is further the contention that all the children of Najar Singh have also died.
5. Per contra learned senior counsel appearing on behalf of respondents No.1 and 2 would contend that the civil suit was decreed on 17.01.2007 and the cross-appeal filed by the respondent was allowed vide judgment and decree dated 18.04.2009. Earlier one Pal Singh had claimed possession of the property and had filed objections which were dismissed on 27.01.2012. On an appeal preferred by Pal Singh the same was partly allowed, however, CR-5322-2012 was filed by the respondent which came to be allowed. Learned senior counsel would further contend that the present petitioner is none else than the sister of the judgment debtor which fact is not being denied by her. It is further the contention that the judgment debtor in connivance with the petitioner is trying to obstruct the delivery of possession one way or the other. Learned senior counsel would further contend that there is not an iota of evidence regarding possession of the petitioner on the suit property or regarding her relation with Najar Singh.
6. I have heard the learned counsel for the parties.
7. In the present case the petitioner herein is none other than the sister of judgment debtor No.1 namely, Amarjit Singh Samra, which fact, as observed by the Executing Court, has not been denied by the petitioner. The petitioner had filed the objections claiming to be in possession of the entire suit property. In support she had produced a certificate given by the Gram Panchayat, Mehat. The Executing Court held that there was not a single revenue

document which had been placed on the record despite the claim of the petitioner that she was in possession since 1978-79. There is also no supporting document which had been filed by the petitioner to establish the death of the decree holders. Even in the present revision petition, though it has been vehemently argued by the learned counsel for the petitioner, barring the reliance on the certificate issued by the Gram Panchayat, there is not a single document to support the argument of the learned counsel for the petitioner that she has been in long possession of the suit property. Learned counsel for the petitioner has also not been able to deny the fact that the petitioner is the real sister of judgment debtor No.1 namely, Amarjit Singh Samra. The present petition seems nothing but an oblique effort to try and obstruct the execution. It is oft said that the travails of a decree holder commence after obtaining a decree in his favour, so seems to be the case herein. The argument of the learned counsel for the petitioner that the decree itself was a result of fraud cannot be gone into by the Executing Court as the Executing Court is to execute the decree which has since attained finality. Further, counsel for the petitioner has not been able to show any fraud which has been committed by the decree holders. Rather, except for bald statements that the children of Najar Singh have died and that the petitioner is in possession of the suit property and that she is the relative of Najar Singh, there is not a single document except for a certificate from the Gram Panhayat which has been relied upon by the petitioner.

8. In view of the above, I do not find any reason to interfere with the well-reasoned order passed by the Executing Court. The revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

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