

In the Court of Senior Civil Judge, Court No.1, Sundernagar, Distt. Mandi, Himachal Pradesh.

Kirpa Ram v. Khazana Ram.

19.08.2020

Present: Sh. P.S. Sen, Ld. advocate for applicant/DH.
Sh. Rajesh Parashar, Ld. Advocate for respondent/JD.

Briefly stated, the facts of the case are that a Civil Suit No.21-I/2011 titled Kirpa Ram v. Khazana Ram filed by applicant/DH (hereinafter to be referred as 'the plaintiff') against respondent/JD (hereinafter to be referred as 'the defendant') for permanent prohibitory and mandatory injunction was decreed vide judgment and decree dated 19.12.2016 and defendant was *inter alia* directed by way of mandatory injunction to remove encroachment to the extent of 00-00-02 bighas depicted as Khasra No.175/1 in *tatima* annexed with demarcation report Ex.DW1/B situated in Muhal DPF Dhawal/226, Tehsil Sundernagar, Distt. Mandi, H.P.

2 To get execution of above said decree, plaintiff filed present application for execution vide Execution Petition No.1 of 2018 (1-X/2018). This Court after considering the objections filed by defendant issued warrant of possession vide order dated 04.04.2019. Thereafter, also repeated warrants of possession were issued by the Court which were received back unexecuted on one ground or another. Thereafter, vide order dated 09.03.2020 it was directed by this Court that since repeated warrants of possession issued by this Court have been received back unexecuted on one ground or another, any approach delaying execution of warrants on the part of executing agency shall attract initiation of contempt proceedings for non complying with lawful order of a Civil Court and report was called for 28.04.2020. In the meantime, situation of Covid-19 Pandemic arose and the case was fixed for effective hearing for future dates vide separate office orders. During this period warrant of execution was issued by this Court was awaiting its execution by revenue agency.

3. When revenue authorities reached to execute warrant of execution on the spot, defendant rushed to this Court by moving an application for recalling of warrant of possession vide CMA No.302/2020 claiming therein that plaintiff had already sold the portion of the land forming part of the decree to three persons namely Smt. Sukhdei, Sh. Karam Chand and Sh. Bittu Ram by carving a *tatima*. Fresh objection was taken by defendant vide above said application that since the portion of the suit land from which he was directed to be ejected in the decree had been sold by plaintiff to some other persons by carving a *tatima*, the decree is not executable in favour of plaintiff. Copy of the sale deed

executed by plaintiff in favour of above said three persons along with *tatima* forming part of said sale deed was filed along with the application by defendant. Vide this Court order 10.08.2020 executing revenue authority was directed not to demolish the structure till further directions as an interim measures to protect the subject matter.

4. **Directions for Executing Agency:-** In above detailed facts and circumstances of the case on one hand plaintiff is having an executable decree in his hand and has moved before this Court seeking execution of the same. On the other hand, defendant has raised an objection by moving a separate application for recalling of warrant of possession on the ground that the portion of the land measuring 00-00-02 bighas which was directed to be given by defendant to plaintiff under the decree had already been sold by plaintiff to three other persons. A certified copy of sale deed executed by plaintiff in favour of three persons placed on record by defendant shows that *tatima* sale has been made by plaintiff in favour of said three persons.

5. Meaning thereby there are two *tatimas*, one forming part of the decree in favour of the plaintiff and other forming part of the sale deed executed by plaintiff in favour of said three persons, on record which can easily be compared by executing agency after making actual visit to the spot.

6. In view of above, executing agency is directed to return warrant of possession issued by this Court vide order dated 09.03.2020 after its due execution along with complete report on following points:-

- i. Whether same portion of the suit land as depicted in copy of *tatima* annexed with demarcation report Ex.DW1/B forming part of the decree is included in sale deed No.269 dated 12.12.2017 executed by plaintiff in favour of three persons namely Smt. Sukhdei, Sh. Karam Chand and Sh. Bittu Ram?
- ii. If point No.1 above is answered in affirmative, Executing Agency is directed to give detailed mathematical comparison of both the *tatimas*.
- iii. In case, point No.1 is answered in negative or partly in affirmative, in that case Executing Agency apart from giving above directed detailed report, is directed to execute warrant of possession issued by this Court vide order dated 09.03.2020 by giving actual possession to plaintiff on the spot by way of demolition of structure in terms of decree passed by this Court.
- iv. To clarify further, it is directed that in case the encroached portion is not included in *tatima* forming part of the sale deed executed by plaintiff in favour of above said three persons, actual possession by way of demolition of encroached portion be given to plaintiff on the spot and in case only some portion of the encroached portion is included in *tatima* forming part of the sale deed executed by plaintiff in favour of above said three persons, possession of remaining portion in possession of defendant be given to plaintiff on the spot.

v. Revenue Agency is also at liberty to give its report on any other point detailing above said points.

7. Let, in continuation of warrant of possession issued vide this Court order dated 09.03.2020, a copy of this order along with copy of sale deed No.269 dated 12.12.2017 executed by plaintiff in favour of three persons namely Smt. Sukhdei, Sh. Karam Chand and Sh. Bittu Ram and *tatima* annexed thereto be sent to Sub Divisional Collector, Sundernagar forthwith for strict compliance of the order in letter and spirit. Directions issued vide order dated 09.03.2020 directing that any approach delaying execution of warrant on the part of executing agency shall attract initiation of contempt proceedings for not complying with lawful order of a Civil Court are still open for consideration of this Court. Report be submitted only by gazetted revenue officer on or before 28.09.2020. In case, report is made by an officer below the rank of Sub Divisional Collector, the same be counter signed by Sub Divisional Collector himself.

(Hakikat Dhanda)
Senior Civil Judge,
Court No.1, Sundernagar, Mandi, H.P.