

## Raj Kaur Vs. Sumitra Devi.

Present: Shri Sandeep Kamra, Advocate for DH.  
Shri Anand Goyal, Advocate for JD.

Submissions heard on objections filed by JD. It is averred by the JD that DH is estopped from filing the present execution by her own act and conduct because she failed to comply with the directions given to her in decree dated 3.2.2014. It was incumbent upon DH to deposit the balance sale consideration within the time specified in decree dated 3.2.2014 but till today, this amount had not been deposited by the DH either in court or not even given to the JD. Therefore, DH has no right to get execution of decree dated 3.2.2014.

It is further averred by JD that at the time of alleged sale agreement, JD was not in possession of suit land as it was under the possession of one Avtar Singh, S/o. Dalip Singh, R/o. Naiwala in the capacity of tenant. This Avtar Singh had filed application for correction of Khasra Girdawari of suit land in his name which was allowed by AC IInd Grade, Rania, vide order dated 3.10.2006. DH filed appeal against the order of AC IInd Grade before Collector, Ellenabad by referring to sale agreement dated 23.12.2005 but his appeal was dismissed by the Collector vide order dated 7.3.2007. These orders were not challenged by DH in his suit before Trial Court. Avtar Singh was not made party by DH before the Trial Court, therefore, now, DH cannot file execution for taking possession of suit land because same is under possession of Avtar Singh who is not party to the suit and against whom, no judgment had been passed. With these submissions,

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JD prayed that execution be dismissed.

In reply to objections, DH submitted that no time was fixed by trial court for depositing the balance sale consideration. JD was directed by the Trial Court to execute the sale deed within 3 months from the date of judgment but for the DH, no such time was stipulated in the decree. Therefore, due to non-depositing the balance sale consideration by the DH, execution cannot be dismissed. It is further averred in reply by DH that Avtar Singh, who is alleged to be in possession of the suit land, was not party in the suit. JD has no locus standi to raise objection on behalf of Avtar Singh. In fact, JD, in connivance with Avtar Singh, deliberately got corrected Khasra Girdawari in his (Avtar Singh) name. DH preferred the appeal against the order of correction of Khasra Girdawari but relief was not granted to him by revenue authorities on the ground that agreement to sell does not confer any title and revenue authorities directed the DH to file the proceeding for correction of Khasra Girdawari after getting the sale deed of suit land executed in her favour. Therefore, now, on the basis of objection regarding possession of Avtar Singh over suit land, JD cannot create any obstruction in execution of judgment and decree dated 3.2.2014.

I have heard rival contentions of both sides and perused the case file very carefully.

First objection from the side of JD is that balance sale consideration was not deposited by DH within stipulated time therefore, it amounts to non-compliance of Order 20 Rule 12-A CPC and hence, DH

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cannot seek execution of judgment dated 3.2.2014. I do not agree with this contention. While passing judgment under execution, learned Trial Court, in para No.35, mentioned that suit of the plaintiff is decreed for possession of suit land by way of specific performance of agreement dated 23.12.2005 on payment of balance sale price by the plaintiff. No time was fixed by Trial Court for the payment of balance sale consideration. In the absence of any time fixed, even if the balance sale consideration had not been paid by DH till the time of execution, it cannot be said that she had not made compliance of the direction of Trial Court. As per Order 20 Rule 12-A CPC, where a decree is for specific performance of contract for sale, it shall specify the period within which the payment shall be made. Meaning thereby that this order cast a duty upon the Trial Court to specify the period during which the DH has to pay the balance sale consideration but when the period has not been fixed by the Trial Court then, non-depositing the balance sale consideration by the DH cannot be made a ground to dismiss the execution application. Hence, on the basis of above objection, execution cannot be dismissed.

Another objection raised by JD is that one Avtar Singh, being tenant, is in possession of the suit land therefore, plaintiff cannot seek possession of this land in this execution. I am of the considered opinion that this objection can only be taken by Avtar Singh not by JD. JD has no locus standi to raise objection on behalf of tenant Avtar Singh. If the warrant of possession is issued and any objection is raised by Avtar Singh that he is

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actually in possession being tenant then he is at liberty to file 3<sup>rd</sup> party objection and that shall be considered as per law but it is not for the JD to say that one Avtar Singh is in possession of the suit land therefore, execution be dismissed. Moreover, the plea of possession of Avtar Singh was not taken by JD before Trial Court or even before the Appellate Court. Now, first time taking this plea by JD in the execution is of no help to her because the Executing Court is bound by the decree and it cannot go beyond the decree. So, finding no merits in the objections filed by JD, same are hereby dismissed with no order as to cost.

Now, case is adjourned to 2.7.2019 for filing of proposed sale deed by DH.

Date of Order : 27.5.2019.

(Dushyant Chaudhary)  
Addl. Civil Judge(Sr.Divn.)  
Ellenabad/UID No.HR0308.

(Anil Kumar),  
Stenographer.

(Dushyant Chaudhary),  
SDJM, Ellenabad.