

Before : A. P. Chowdhri, J.

RAM KUMAR AND ANOTHER,—Petitioners.

versus

BHALE RAM AND OTHERS,—Respondents.

Civil Revision No. 272 of 1989.

29th March, 1990

*Code of Civil Procedure (Act V of 1908)—S. 115, O. 21, rls. 35(1), 35(2) & 36—Decree for joint possession—Warrants issued for actual possession—Actual possession—Whether can be delivered.*

*Held, that the distinction between the 'actual possession' and 'Joint possession' is well recognised and is of vital significance. Execution of a decree for 'actual possession' is dealt with under O. 21, rl. 35(1) while a decree for joint possession is dealt with under O. 21, rl. 35(2) and rl. 36 of the Code of Civil Procedure. There is no authority for the proposition that where the decree is for joint possession, the delivery of actual possession will have the effect of converting the decree as one for actual possession.*

(Para 4)

*Petition under Section 115 of C.P.C. against the order of the Court of Shri M. L. Bansal, H.C.S., Sub-Judge, 1st Class, Narwana, dated 23rd January, 1939, ordering that the application moved by the decree-holder on 16th January, 1989, for allowing him to deposit the compensation of the alleged standing crops is hereby dismissed with no orders as to costs and further ordering that a precautioning measure, a fresh warrant of possession be issued to the revenue authorities, Uchana, for re-transferring the physical possession, if any, of the suit property to the J. D. forthwith. The decree holder is only given the joint possession as has been held in the judgment and decree dated 10th June, 1988, referred to above. The case is not to come up on 8th February, 1989, for further proceedings.*

*Claim : Application u/o 21, Rule 11, C.P.C.*

*Claim in Revision : For reversal of the order of the Lower Court.*

*S. P. Gupta, Advocate, for the Petitioner.*

*S. D. Bansal, Advocate, for the Respondent.*

## JUDGMENT

A. P. Chowdhri, J.

(1) The material facts which are necessary for the disposal of this revision petition are that the petitioners obtained a decree for joint possession against the respondents from the court of learned Additional District Judge, Jind, on 10th June, 1988. Regular Second Appeal filed by the respondents against the said judgment and decree was dismissed on 17th March, 1989. The petitioners took out execution of the decree on 19th July, 1988 and, *inter alia*, prayed for issuance of warrant for actual possession. On 2nd December, 1988, such warrants were issued by the executing Court of Sub-ordinate Judge, 1st Class, Narwana. In compliance with the warrant of possession, the revenue authorities delivered actual possession of the land in question to the petitioners on 25th December, 1988. As some crop was standing at the time of delivery of possession, a certain amount of compensation was assessed which the decree-holder was required to deposit in the executing Court. The judgment debtor i.e. the respondents made an application on 5th January, 1989, that as the decree itself was for joint possession, actual possession could not be delivered and that possession be restored to them. After notice to the opposite side, the executing Court reviewed the order dated 2nd December, 1988, by the impugned order. It was held that the decree was for joint possession and, therefore, actual possession could not be delivered. It was directed that the possession be redelivered to judgment debtors. The application for deposit of compensation amount for standing crop was dismissed. This revision is directed against that order.

(2) During the pendency of the present revision the parties were directed to maintain *status quo* with regard to possession by order of this Court dated 31st January, 1989. It was served on the officers concerned on 1st February, 1989. In spite of the said order, however, the revenue authorities proceeded to deliver possession to respondents in pursuance of the order of the executing Court on 2nd February, 1989. A contempt of Court petition was moved on which the Naib-Tehsildar who was found responsible for committing disobedience of the order of this Court was convicted and awarded punishment.

(3) In the present revision petition the main question for consideration is whether in a decree for the joint possession actual

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possession can be delivered. Learned counsel for the petitioners relies on *Jayagopal Mundra v. Gulab Chand Agarwalla and others* (1), in which the learned Judges accepted the proposition settled as a result of a series of decision that where 'symbolical possession' is delivered in a decree for actual possession, the symbolical possession will operate as actual possession. In the facts of that case, the decree was for actual possession. The party concerned disputed that instead of delivering actual possession only symbolical possession had been delivered. It was held that against the judgment debtor where the decree was for actual possession, the delivery of symbolical possession amounted to delivery of actual possession. The authority is of no avail to the petitioners because the proposition arising in the present case is converse of the proposition in the aforesaid Full Bench decision. Here the decree was for 'joint possession' and it is to be seen whether the decree for joint possession can ever be deemed as one for actual possession. No authority for this proposition could be cited by the learned counsel.

(4) The other authority referred to by the learned counsel is *Jangir Singh and another v. The State of Punjab and others* (2).

The ratio decidendi of the decision is that for restitution of possession following reversal of decree of the Civil Court by the higher Court an application under section 144 of the Code of Civil Procedure was not the only remedy and did not preclude any other forum/proceeding provided by law under which possession could be claimed. Obviously, the above decision is of no assistance to the petitioners. The distinction between the 'actual possession' and 'joint possession' is well recognised and is of vital significance. Execution of a decree for 'actual possession' is dealt with under Order 21, Rule 35(1) while a decree for joint possession is dealt with under Order 21, Rule 35(2) and Rule 35 of the Code of Civil Procedure. There is no authority for the proposition that where the decree is for joint possession, the delivery of actual possession will have the effect of converting the decree as one for actual possession. The revision petition is, therefore, dismissed.

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P.C.G.

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(1) A.I.R. 1974 Orissa, 173 (F.B.)

(2) 1977 P.L.J. 79.