

In the High Court of Punjab and Haryana at Chandigarh

CR No. 2194 of 2015

Date of decision: 30.03.2015

Isha

.....Petitioner

Versus

Yakub

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Mohammad Arshad,Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 4.2.2015 (Annexure P3) whereby application moved by the petitioner for restoration of possession, was dismissed.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

The decree holder-respondent had filed suit for permanent injunction. The suit filed by the respondent was decreed on 26.3.2012. Thereafter, the decree holder filed the Execution Petition. In the said Execution Petition, warrants of possession was issued, in ex-parte, and possession of the property in question was delivered to the decree holder. The case of the petitioner is that at the time of the handing over the possession to the decree holder, the property had not been demarcated. In fact, the house of the petitioner had been demolished, although, the same was not part of

the suit property. Learned Executing Court, while dismissing the application, has observed as under:-

“The JD failed to show title/ownership or possession over the suit property. However, the warrant of possession issued by the court had been duly executed by Tehsildar Ferozepur Jhirka and the possession of the suit property has been duly handed over to DH. The JD had not filed any objection against the issuance of warrant of possession in favour of the DH. No question of demarcation arises in execution of the decree, clearly mentioning the suit property. If the JD wanted to demarcate the suit property, he must have filed application for demarcation of suit property before the trial Court. The suit property is not disputed in the present execution. Moreover, the JD has already admitted in his written statement during trial of the suit that he has constructed residential house in the suit property. Therefore, he cannot be allowed to blow hot & cold simultaneously. There is not any property of the JD in the area surrounding to the suit property. In this situation, demarcation of the suit property is not warranted. The application of the JD for restoration of the suit property by demarcating is devoid of merits and, therefore, not maintainable in the eyes of law. Hence, the application for restoration of the suit property to the JD is hereby dismissed.”

The reasons given by the Execution Court, while dismissing the application are sound reasons. Respondents had filed suit for permanent injunction qua land measuring 4 kanals 7 marlas. The

warrants of possession issued by the Court was duly executed by the Tehsildar and the possession of the suit property was handed over to the decree holder. So far as demarcation of the property in question is concerned, the said relief should have been sought by the petitioner before the trial Court. Moreover, it has been noticed by the Executing Court that it was the case of the petitioner himself that he had raised construction in the suit property. It has also been noticed by the Executing Court that the petitioner was not holding any property around the suit property. In these circumstances, learned Executing Court had rightly held that the property in question did not require any demarcation.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 30,2015
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