

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3551 of 2014 (O&M)

Date of decision: 09.04.2015

Sukhwinder Kumar and others

... Petitioners

versus

Ram Nath

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Dinesh Nagar, Advocate for the petitioners.

Mr. Sandeep Jain, Advocate for the respondent.

K.Kannan, J.

The judgment debtor is in revision against an amendment brought at the stage of the execution of the decree relating to the linear measurements of the property. The suit for specific performance was with reference to a building described and situate in one kanal within four boundaries on the West by rasta, on the North by house of Ashok Kumar, on the East by property of Natha and on the South by the property of Harmesh Lal. The amendment became necessary when the bailiff returned the warrant the saying that within the boundaries the linear measurements as found in the plan Annexure-P2 did not exist. The linear measurements in the plan annexed with the plaint was 55 ft. West and 40 ft. South. The bailiff's return made reference to a different extent and therefore, the decree holder was coming with the linear measurements within the same boundary that showed the East West extent on the North was 82 ft. and 72 ft. on the South and South-North extent was 26 ft. on the West and 49 ft. on the East. This amendment was ordered as sought for by the decree-holder.

Learned counsel appearing on behalf of the judgment debtor says that he will have no objection to the property being delivered as per Annexure P2 within measurements given there. He would object to the fact that the Court has allowed for the amendment

even without service of notice to the judgment debtor. Counsel appearing on behalf of the decree holder who join issues on contentions raised to state that the property is described as a house situate within four boundaries in an extent of one kanal. The linear measurements of the house already given was a mistake and it would work out to an extent far less than one kanal and only the measurements now given would bring the property within the extent. He was not substituting the property in any way and the correct plan was required to be submitted in view of the baliff's return. On the contention that the order was passed without notice, the counsel for the respondent would explain that the petitioner-defendant had remained ex-parte and the Court was, therefore, disposed it without notice.

The best method of understanding the identity of property shall always be with reference to the boundaries and that is why the rules of pleadings as contained in Order 7 Rule 3 state inter alia that if subject matter of the suit is with reference to immovable property, the plaint shall contain the description of the property sufficient to identify it and in case such property can be identified by boundaries or entries in a record of statement or survey, the plaint shall specify such boundaries or khasra Nos. The Executing Court's power to understand the property in dispute shall travel as far as to see whether the property contains features which could help the Court identify the same, if there is any problem encountered at the time of giving effect to the decree. It is a serious malady in Courts that the travails of the decree holder do not end with securing the decree; it begins on securing the decree. Litigation does not end with securing an adjudication by judicial reasoning. A new litigation always begins at the execution stage. It is to scuttle such an obnoxious process that Courts must adopt a seamless procedure to ensure that the decree obtained is put to execution without any delay or without any obstruction. The Executing Court shall endeavour that if there are obstructions by the judgment debtor himself, it should ensure that the judgment debtor does not lose any property

which he did not bargain for and which the decree does not include.

In this case, the property is not difficult to identify, for, the property sold is a building. The property is situate immediately adjoining the *rasta* that is running on the West of the property. There are owners on all three sides. If there is the discrepancy between the measurements and boundaries, it is an established principle of law that boundaries will prevail. We have already extracted Order 7 Rule 3 CPC that sets out the parameters relating to immovable property. If the modification is now made to alter linear measurements it would still be less than one kanal but would stay confined within the four boundaries which are already set forth in the plaint. I was only anxious to see that the judgment debtor does not suffer an order even without notice. There existed perhaps a justification by the fact that the defendant had remained ex-parte and no further notice was necessary. The judgment debtor has had full say before me and he would argue that he will have no objection to the property as originally described be delivered possession. I do not think the offer is even *bona fide* for the linear measurements as originally given cannot dictate identity of property. It is required to be corrected same with modifications. I do not think there is any justification for obstructions. The modification which was allowed by the Court below through the amendment under Section 151 and 152 of the Cr. P.C was justified to ensure that the decree obtained does not became a paper decree and that it is put to a stage when there are no further obstructions.

The impugned order is maintained and the civil revision petition is dismissed with above observations.

09.04.2015
kv

(K.KANNAN)
JUDGE