

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4959 of 2013 (O&M)

Date of decision: 28.05.2015

Jagjit Kaur and others

... Petitioners

versus

Shri Madan Mohan Kapur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Manish Prabhakar, Advocate for the petitioners.

Mr. Sameer Sachdeva, Advocate for the respondent.

K.Kannan, J.

The application for impleadment is sought by the son of the plaintiff-mother claiming right of succession by a Will. Impleadment is ordered subject to all just exceptions.

There is also a prayer for a clarification that under the guise of an order of stay granted by this Court, the petitioner is putting up further construction. He would also urge that the stay was sought for in the application to set aside the ex-parte decree and the application for setting aside ex-parte decree itself has been dismissed for default and therefore the revision cannot be pursued. He, therefore would want the stay order granted by this Court to be vacated.

I do not think that any clarification or modification is necessary to the order already passed granting stay. If an ex-parte decree was passed and there was an application to set it aside, the Court should have normally granted stay of execution of the decree for otherwise the very purpose of filing the petition would have become meaningless. This is particularly so in a situation where the petitioner was contending that he had not been served with summons in suit. He was also contending that in respect of the construction which he was making in property in Khasra No. 248 there was already a decree in

favour of the defendant petitioner. The present plaint is in respect of Khasra No. 249-250. There is a large ground to traverse of having to identify whether any portion of the property in which the defendant is residing and over which further constructions are made by making improper exercise of the right assured in a decree obtained by the defendant against the plaintiff. It would only be appropriate that the trial Court had granted the order of stay of further proceedings.

I am informed that even the application for setting aside the decree which was dismissed for default is sought to be restored through another application by pointing out to the fact that the Court had called the case on the date which was not originally notified and both the parties were absent. The counsel for the petitioner states that the petitioner is a Lecturer in a College waiting for her superannuation to arrive and therefore, she was only making some minor alterations to make the house habitable and comfortable for her. In the peculiar circumstances, where the petitioners' plea is rested on a decree which was already obtained I do not think it will be proper for any fetter to be imposed and it will be open to the plaintiff to approach the trial Court itself for suitable directions.

The Court may ensure that any construction or modification which the petitioner makes shall be subject to the final outcome of the suit and no equities will be pleaded by the petitioner, for, she must take the consequences of all the alterations made during the pendency of the suit where the plaintiffs are staking claim contending that the construction is over some part of the property that belongs to them.

The civil revision itself is disposed off and the plaintiffs' action for execution of the ex-parte decree shall remain suspended till the disposal of the application for restoration and if restored till the disposal of the application to set aside the ex-parte decree. The Court will also be competent to issue appropriate directions on whether the construction could be stopped if there is any prima facie material that the construction was being made in any portion of the property in

Khasra No. 249-50.

With these observations, civil revision petition is disposed
of.

(K.KANNAN)
JUDGE

28.05.2015
kv