

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.631 of 2011 (O&M)
Date of decision:22.01.2015

Balwan Singh & others

....Petitioners

Versus

Sudesh Devi & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.S.K.Yadav, Advocate, for the petitioners.

Mr.J.P.Sharma, Advocate, for the respondents.

G.S.Sandhawalialia J.(Oral)

Challenge in the present revision petition is to the order dated 18.11.2010, whereby the execution application of the decree holder, has been dismissed by the Executing Court on the ground that the warrant of possession was duly executed earlier and the report was given by the revenue officials that on the spot possession of the plaintiff-applicant had been restored. The other reasoning given is that the Executing Court cannot repeatedly decide the question of possession and encroachment and once warrant of possession has been received back, duly executed, further warrant of possession, cannot be issued. The objections of the decree holder were, thus, dismissed in the execution petition, being fully satisfied by way of execution of the warrant of possession.

There is no dispute regarding the fact that a decree dated 23.08.2004 (Annexure P1) was passed, whereby the defendants in the said suit were restrained from interfering in the suit property, which was measuring 77 kanals 14 marlas, situated in Village Kemla, details of which were mentioned in the

decree. The plaintiffs filed execution petition on 30.10.2004, in which notice was issued.

A perusal of the record, which has been received, would go on to show that the report of the warrant of possession was not received on 07.05.2005 and the case was adjourned to 23.08.2005. The report of warrant of possession was received on 23.08.2005 and the case was adjourned to 13.12.2005, for consideration of the said report and the objections, if any. The petitioners filed an application under Order 21 Rule 32 on 14.10.2006, in which notice was issued to the other side for 03.02.2007 and the proceedings were kept pending for service of the defendants. On 24.01.2009, judgment debtor No.2 was proceeded against *ex parte* and others were directed to be served through munadi as well as through ordinary process.

Eventually, vide the *ex parte* proceedings dated 17.07.2010, a Local Commissioner was appointed to demarcate the land of the plaintiffs, for the alleged encroachment and directions were issued to the Local Commissioner to execute the local commission, before the date fixed, as there was direction issued by this Court to dispose of the matter. As per the report of the Local Commissioner dated 16.10.2010 (Annexure P2), after demarcating the land, noticed that land measuring 1 kanal 16 marlas, had been got mixed up by the judgment debtors/defendants. The said demarcation was carried out in the presence of the Patwari Halqa Pathera and Patwari Halqa Dhanaunda. Relevant part of the report reads as under:

“Both the parties and presentees were satisfied while completing the land from both the sides and thereafter, after demarcation it has been found that Khasra No.4/25/2 min Eastern side Eastern/10, Western/10, Southern/3, Northern/3, total measuring 0 Kanal 3 Marla, 15/5 Min Eastern 18/36-36-3-3 total measuring 0 Kanal 12 Marla, 15/6 Min Eastern, 36-36-3-3 total measuring 0 Kanal 12 Marla, 15//15/1, 26-26-3-3, total measuring 0 Kanal 9 Marla, total 1

Kanal 16 Marla, Ajit Singh-Mange Ram sons of Sri Chand etc. defendants have mixed the abovesaid land into their land of Khasra No. Nandram 210//25, 216-5-6-15 of village Dhanaunda and has cultivated the same, which is shown in the map with red colour as MNOPQRST. After demarcating the land the map has been prepared which is attached alongwith list of the presentees, information letter and report is submitted.”

Thus, it is clear that 1 kanal 16 marlas of land had been mixed up by the defendants and the same was shown in the map with red colour, appended as MNOPQRST. The Trial Court, vide order dated 19.10.2010 also noticed the said fact and observed that there was violation of order of judgment and decree and it is an appropriate case to enforce possession, ousting the encroachment of judgment debtors, who had been proceeded against *ex parte* and warrant of possession was also issued. The said order reads as under:

“Heard on L.C. report & same shows that Khasra No.4//25/2, 15/5 and 15//5/1 L.C. had found the possession of defendant/J.D. Ajit Singh & Mange Ram. Heard as the judgment & Decree dated 23.08.04 & same was in regard to suit property & defendants were restrained from interfering in the suit property of plaintiff. Considering the above as there is breach of judgment & decree it is an appropriate case to restore possession ousting the encroachment of J.D. who were also preferred to be *ex parte* in the judgment & decree. Warrant of possession be issued as per L.C. report or filing PF etc. for 29.10.10.”

Thereafter, it seems that an application for setting aside the *ex parte* proceedings was filed by the judgment debtor No.3, Ajit Singh and Mange Ram. The decree holder, on 01.11.2010, gave his no objection, for setting aside the *ex parte* proceedings and the applicants were given time to file objections to the Local Commissioner's report. Accordingly, warrant of possession along with the Local Commissioner's report was recalled by the concerned officer vide the said order. Reply to the objections of the Local Commissioner's report were filed on 13.11.2010 by the decree holder and the case was fixed for 18.11.2010, for order

on objections of the decree holder dated 14.10.2006 against the report of warrant of possession. Resultantly, the impugned order has been passed.

The facts have been noticed in detail. The order which has been passed is apparently not in consonance with the record. Admittedly, on 23.08.2005, warrant of possession, issued earlier, had never been satisfied and the case was only fixed for consideration of the abovesaid report and objections, if any, which would be clear from the order, which reads as under:

“Report of warrant of possession received. Now the case is adjourned for 13.12.05 for consideration of the above said report and objections, if any.”

In pursuance of the report received, the petitioners had filed the application under Order 21 Rule 32 CPC and thereafter, the defendants had been proceeded against *ex parte* as noticed above. A Local Commissioner had been appointed who had factually found that 1 kanal 16 marlas of land had been occupied by the defendants and the LR's and vide order dated 19.10.2010, warrant of possession was also issued. It was, thereafter, that the defendants who were watching the proceedings, stepped in for setting aside the *ex parte* proceedings and on the no objection by counsel for the plaintiff-petitioners, the *ex parte* proceedings were withdrawn, giving liberty to file objections.

Thus, the whole premise of the Executing Court is totally on a wrong basis. Once a decree of permanent injunction has been granted to the plaintiff-petitioners and the execution was pending on the ground that the land was in possession of the defendants, it was not appropriate for the Executing Court to have dismissed the execution proceedings on the ground that the same had earlier been satisfied, which is also not correct. The decree has to be taken to its logical end and the defendants cannot defend the litigation which had become final, by an objection, as such, regarding the execution proceedings.

Accordingly, order dated 18.11.2010 is hereby quashed and the matter is remanded to the Executing Court, which shall proceed in accordance with law, after hearing both the parties. It shall also decide the objections, filed by the defendants, which are on record.

With the abovesaid observations, present revision petition stands allowed, with ₹5000/-, as costs, to be paid by the respondents to the decree holder.

22.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE