

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 6555 of 2012 (O&M)
Date of Decision : 13.02.2015

Gurdial Singh

....Petitioner

Versus

Nagar Panchayat, Ubhia and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. H.S. Batth, Advocate
for the petitioner.

Mr. Vikas Mehsempuri, Advocate
for the respondents.

R.P. Nagrath, J. (Oral)

The instant revision is filed against the order dated dated 05.10.2012, passed by the learned Executing Court whereby application filed by the petitioner-decree holder (DH) complaining violation of decree for permanent injunction has been dismissed.

The petitioner filed a suit claiming permanent injunction which was initially dismissed by the trial Court on 04.05.1987 but the appeal was accepted *ex parte* and a decree was passed on 14.06.1989. The land in question was bearing *khasra* no. 64//23/2/2/(2-8), 24/8-0, 25/8-0 measuring 18 *kanals* 8 *marlas*.

Petitioner-DH filed an application on 04.04.2009, against *Nagar Panchayat* and members of *Nagar Panchayat*. It was stated in the application that the respondents have tried to

interfere in the peaceful possession of the petitioner-DH in the month of May, 2005 and have constructed toilets over the land in dispute illegally and forcibly and also raised certain other constructions.

The respondent in written reply to the application stated that they are not the parties to the suit and have no knowledge about the judgment and decree passed in favour of the petitioner. The learned Executing Court framed the following issues from pleadings of the parties:-

- (i) Whether respondents violated the judgment and decree dated 14.06.1989? OPA
- (ii) Whether application is not maintainable? OPR
- (iii) Whether application is barred by limitation? OPR
- (iv) Whether applicant has no locus-standi to file present execution? OPR
- (v) Whether application is bad for non-joinder of necessary parties? OPR
- (vi) Relief.

The petitioner himself appeared in the witness-box and examined DHW-2-Balbir Singh, *Nambardar* and also a draftsman in support of his case.

On analysis of the evidence, learned Executing Court held that the petitioner has not been able to prove any alleged violation or breach of the decree for permanent injunction.

I have heard learned counsel for the parties at considerable length and find that there is no scope of interference

in the findings of the learned Executing Court.

In order to establish the breach of the decree for permanent injunction, the petitioner-DH was supposed to lead positive evidence in proof of the fact that the construction was raised over the *khasra* numbers of the land for which decree was passed. It has been observed by the learned Executing Court that the property in question has not been got demarcated by the petitioner for assisting the learned Executing Court to find whether the construction was raised over this property but no such evidence was produced by the decree holder. The only other witness for supporting the petitioner was DHW-2 Balbir Singh, *Nambardar*, who made oral statement. There was basically no evidence as to which of the respondents raised construction, for fixing liability for breach of the injunction decree. The draftsman examined by the petitioner-DH stated that he had not seen the revenue record for preparing the sketch and, therefore, that site plan was insufficient to support the petitioner's version.

I am of the view that unless the petitioner-DH proved the acts of infringement by any of the respondent specifically, there was no occasion of holding them responsible for the construction. In the absence of cogent and positive evidence, the order of learned Executing Court cannot be possibly interfered. Learned Executing Court observed as under:-

“.....But it is pertinent to mention here that there is only oral evidence of DH himself as well as the oral

evidence of Balbir Singh, Nambardar. Balbir Singh, Nambardar in his cross-examination has admitted that the disputed land is Jumla Mushtarka Malkaan and Gram Panchayat has not taken possession of the said property. He has stated that the walls have been raised about 3-4 years back and when his evidence was recorded it was 27.01.2012. It means that somewhere in the year 2008 the alleged wall have been constructed by the JDs/respondents. But the decree holder in his application has mentioned that the JDs/respondents have constructed the toilets in the year 2005. Therefore, this is the major discrepancy in the evidence and pleadings of the decree holder and similar statement has been given by decree holder himself in his cross-examination, wherein he has stated that the wall as been raised about 3-4 years ago by JDs/respondents, meaning thereby that the walls were raised somewhere in the year 2008. But in the application decree holder has mentioned the construction of toilets in the year 2005. Further he has admitted in his cross-examination that he is in possession of his property, but if the JDs/respondents have constructed wall or toilets in the property, then how the decree holder is still in possession of the suit property. Moreover, decree holder has alleged in his

pleadings that the toilets have been constructed in the property in his possession by the JDs/respondents, but the evidence is regarding the raising of wall only.”

I, therefore, find no merit in the instant petition and the same is dismissed.

February 13, 2015
jk

(R.P. NAGRATH)
JUDGE