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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.7765 of 2015 (O&M)

Date of Decision: 19.11.2015

NARINDER MANOCHA

.....Petitioner

Vs

SHOKAT ALI

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate
for the petitioner.

1. *Whether Reporters of 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?*

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner/counter-claimant in civil suit No.107 of 2004 i.e. Narinder Manocha has assailed order dated 28.10.2015 vide which application under Section 151 CPC for the issuance of necessary clarification has been dismissed by the Additional Civil Judge (Sr. Divn.) Kalka.

[2]. Civil suit for permanent injunction was filed by Shokat Ali against the present petitioner. In the said suit, defendant/petitioner filed counter claim. Vide judgment and decree dated 27.10.2004, civil suit was dismissed whereas counter claim of the present defendant/petitioner was decreed. While accepting the counter-

claim, the trial Court restrained plaintiff Shokat Ali from interfering in possession of the defendant/petitioner over the property No.97 except in due course of law.

[3]. The aforesaid judgment and decree was unsuccessfully assailed by the plaintiff Shokat Ali in appeal which was dismissed on 28.01.2005. In RSA No.3119 of 2005, the controversy was disposed of vide order dated 21.08.2009, thereby accepting the appeal and it was made clear that the plaintiff Shokat Ali will be having no connection with property bearing No.97 which was held in possession of the present defendant/petitioner and the defendant/petitioner has no concern with property bearing No.843.

[4]. Even the aforesaid order was subsequently clarified in an application under Section 151 CPC on 04.08.2010 (Annexure P-3) wherein this Court was pleased to observe in the following manner:-

“6. During the course of Regular Second Appeal, the parties arrived at a compromise, as a result whereof, their statements were recorded, the appeal was accepted, and the judgment and decree of the Courts below were modified, in the manner, that the respondent shall not interfere into the possession of the appellant, in respect of property No.843 in dispute and the appellant shall not interfere into the possession of the respondent over property No.97.

7. I have heard the Counsel for the parties and have gone through the records of the case carefully.

8. The Counsel for the applicant-appellant, has submitted that property no.97, is in possession of the

applicant/respondent. He has further submitted that taking advantage of the words, in respect of property no.843, in dispute, the plaintiff/appellant started interfering into the possession of the applicant/respondent, in respect of property no.97. He has further submitted that clarification/modification of the judgment and decree dated 21.08.2009, is, thus, required to be made.

9. *On the other hand the Counsel for the respondent/appellant, has submitted that the judgment and decree dated 21.08.2009 is clear and unambiguous and, as such, no clarification or modification therein, is required to be made.*

10. *The plaintiff/appellant filed a suit that he was in possession of the property bearing No.843. On the other hand, the defendant/applicant claimed, in the written statement, that he was in possession of property no.97. When the parties arrived at a settlement, and their statements were recorded, they were duly assisted by their Counsel. The operative part of the order, which was passed on 21.08.2009, reads as under:-*

“In view of the above, the appeal is accepted. The judgments and decrees of the Courts below, are modified, in the manner, that the respondent shall not interfere into the possession of the appellant, in respect of property no.843, in dispute, and the appellant shall not interfere into the possession of the respondent over property no.97.

Disposed of.”

11. *With a view to avoid any sort of confusion, between the parties, it is made clear that property no.843, in dispute, be read as the one (as claimed by the plaintiff in the suit). No other clarification is required.*

12. *For the reasons, recorded above, the application*

is disposed of, in the manner, that in para no.4 of the judgment dated 16.8.2009 in line 4 after the words “in respect of property no.843, in dispute”, the words, (as claimed by the plaintiff, in the suit) shall be added. Similarly clarification shall be made, in the decree sheet.”

[5]. Now an application has been filed by the defendant/petitioner under Section 151 CPC for seeking further clarification on the ground that plaintiff Shokat Ali has denied even existence of property No.97 and has started interfering in property No.97. This application has been rejected by the Additional Civil Judge (Sr. Divn.) Kalka vide order dated 28.10.2015 on the basis of clarification given by this Court vide order dated 04.08.2010.

[6]. Learned Senior counsel duly assisted by Mr. G.S. Bhandal, Advocate very fairly states that infact proceedings in terms of Order 21 Rule 32 CPC should have been initiated before the trial Court for the violation of the ultimate decree drawn by this Court.

[7]. In the light of aforesaid facts, learned Senior counsel intends to withdraw this revision petition with a liberty to file proceedings in terms of Order 21 Rule 32 CPC before the trial Court.

[8]. In the nature of controversy involved between the parties, and after the passing of decree by this Court, it would be expedient to allow the petitioner to resort to the proceedings of execution in terms of Order 21 Rule 32 CPC. If such a petition is filed before the trial Court, then trial Court would be obligated to decide the controversy on merits without being influenced by any observation

passed in the impugned order.

[9]. In view of above, the revision petition is dismissed as withdrawn with the aforesaid liberty.

November 19, 2015

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**(RAJ MOHAN SINGH)
JUDGE**