

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-803-2015

Date of decision: 4.2.2015

Suraj Bhan

..... Petitioner

Versus

Bhadu and another

..... 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. Krishan Singh, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India, seeking to set aside the order dated 13.1.2015 (Annexure P-6 impugned order in fact is Annexure P-9) passed by the Executing Court whereby the objection application filed by the petitioner for assessment and fixation of value of land in dispute as per Government rates and for making payment to the respondent-decree/holder (DH) was dismissed.

2. I have heard learned counsel for the petitioner and carefully perused the impugned order as well as the paper book.

3. Suit No. 575 of 1994 was instituted by respondent No. 1-Bhadu on 8.10.1994 for possession of property in question (bara) on the ground that petitioner-defendant had illegally and forcibly occupied this

property in the year 1990. The bara in question was allotted to respondent No. 1-DH by the Haryana Government in the year 1981 being non-proprietor and he had been in possession of the said bara since the allotment. The suit was decreed by the trial Court vide judgment and decree dated 3.8.2000 (Annexure P-1) i.e. after the matter remained pending for 6 years. This judgment admittedly, had attained finality and execution of the judgment is pending.

4. In the application dated 3.12.2014 (Annexure P-7), the petitioner-JD has alleged that this built up house of the petitioner was existing over the land in question, even before the allotment of land by the Gram Panchayat in favour of DH-respondent No. 1. The petitioner claims that decree-holder has executed an agreement to sell dated 1.6.2006 in favour of the petitioner for which a civil suit for specific performance is separately pending. The prayer made by the petitioner in the instant application is to assess the value of the disputed land at the Government rates as the petitioner is statedly ready and willing to pay its value to the decree-holder/respondent No. 1. This prayer is made without prejudice to the rights of petitioner in the suit for specific performance of agreement to sell.

5. Learned counsel for the petitioner submits that marriage of the daughter of the petitioner-JD is fixed for 15.2.2015. In the impugned order, the learned Executing Court, in the impugned order observed as under:-

“By way of instant application a prayer has been made to get the valuable of the suit property

assessed at the Government rates and to give direction to the DH to accept the said amount from JD No. 1 with the plea that the applicant will suffer hardship in case vacant possession of the suit property is handed over to the DH. In the considered opinion of this court mere fact that the JD will suffer hardship is no ground not to enforce the decree in execution. Perusal of the file shows that the decree dated 03.08.2000 could not be executed due to pendency of appeal as well as filing of one application after the other by the JD's. The decree in execution has already attained finality and at present no appeal or revision against the decree dated 03.08.2000 is pending before any court of competent jurisdiction. The executing court cannot go behind the decree and has to execute the decree as such. Even the applicant has failed to mention the provision of law under which the present application has been moved. In the considered opinion of this court no direction can be given to the DH to accept the value of the suit property instead of taking its possession. The DH in his reply has flatly refused to part with the possession of the suit property.

In view of the above discussion, this Court is of the considered opinion that no order assessing the

value of the suit property or directing the DH to accept the assessed amount can be passed. Further, the JD no. 1 had already preferred a civil suit for specific performance of agreement to sell dated 01.06.2006. Hence, the right of the parties with respect to agreement to sell dated 01.06.2006 will be decided in that separate suit. However, no case is made out for staying the proceedings of the present execution petition till the decision of the said separate suit. Further, it is made clear that if the JD no. 1 succeeds in obtaining the decree on the basis of agreement to sell dated 01.06.2006, the JD no. 1 will be at liberty to execute the same against the DH as per law.”

6. In view of the above, I find nothing wrong or perverse with the order passed by the Executing Court. Since the petitioner-JD has already preferred a civil suit for specific performance of agreement to sell, he could make a prayer for *ad interim* injunction in that very suit, if not already filed, which of course has to be decided on its own merits and in accordance with law. It is apparent that an attempt is being made simply to delay the fruits of decree lawfully passed which has attained finality. There is no merit in the instant petition and the same is dismissed.

February 4, 2015
rishu

(R.P. NAGRATH)
JUDGE