

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.8438 of 2015 (O&M)

Date of decision: 10.12.2015

Abdul Majid and others

...Petitioners

versus

Lala Jagan Nath Aggarwal

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Lokesh Sinhal, Advocate,
for the petitioners.

RITU BAHRI, J.

Challenge in this petition is to the order dated 01.12.2015 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Faridabad, whereby objections filed by the petitioners have been dismissed.

In the execution petition (Annexure P-3), Lala Jagan Nath Aggarwal filed an application for grant of police help for executing the warrants of possession. Judgment Debtors-petitioners also filed an application for setting aside the exparte order dated 22.04.2015 and recalling of the order dated 05.08.2015. In that application, judgment debtors-petitioners have alleged that warrants of possession had been issued qua land measuring 1200 Sq. yards, whereupon 80 persons are residing, who have spent about five crore rupees. Further, in the objections filed by the judgment debtors, it was also alleged that a review petition had been filed by them before the Hon'ble Supreme Court on 03.09.2015, therefore, the execution petition deserves to be postponed. It was alleged that the decree-holder-respondent was trying to obtain possession of plot No.3-B/16-17, NIT,

Faridabad without demarcation and measurement of the site which was stated to be the subject matter of the decree in execution. It was necessary to appoint a Local Commission to demarcate the site because under the garb of the decree, the decree holder was trying to take possession of double story residential building of the judgment debtors by demolishing the same. It was further alleged that the houses are part of Plot Nos. 16 and 17.

Reply to the objections was filed by decree holder-respondent taking the plea that in the earlier objections filed by the judgment debtors, they were proceeded against *exparte* vide order dated 01.05.2015. The judgment debtors have obstructed the police force at the time of execution of warrants of possession. The Local Commissioner was appointed during the pendency of the suit and he had prepared a sketch plan as well as report of the premises in dispute. The judgment debtors are in unauthorized possession of plot/house Nos.16 and 17 and the same was to be demolished. It was further alleged that the suit was originally filed by Shanti Devi, but later on, her LRs were brought on record. In this manner, Lala Jagan Nath Aggarwal, HUF through its *Karta* was impleaded as a party and the present application was being filed by substituted legal heirs of Late Shanti Devi.

After hearing learned counsel for the parties, it is apparent that the trial Court has dismissed the objections by giving a detailed reason. It has been observed that the suit property had been duly identified and the suit had been decreed on the basis of site plan (Ex.P-10). During the pendency of the suit, a Local Commissioner was appointed, who gave his report (Ex.P-3) and site plan (Ex.P-4 and P-5). Hence, there was no ground to appoint a fresh Local Commissioner. Moreover, no interim stay was granted in the review petition pending before the Hon'ble Supreme Court. Hence, there was

no ground to adjourn the execution.

Learned counsel for the petitioners has argued that after the death of Shanti Devi, her legal heirs were impleaded as party and the suit was contested by Onkar Nath Aggarwal in the capacity of *karta* of Lala Jagan Nath Aggarwal, HUF. The execution has been filed through General Power of Attorney Sharad Aggarwal, who was earlier the General Power of Attorney of Shanti Devi. After the death of Shanti Devi, the General Power of Attorney (Sharad Aggarwal) could not file the execution petition (Annexure P-3).

Heard. After the death of Shanti Devi, her legal heirs were impleaded as party and Onkar Nath Aggarwal being *karta* of the HUF was competent to pursue the proceedings of the suit. The execution petition filed through General Power of Attorney namely, Sharad Aggarwal is in accordance with his wish. There is nothing wrong in filing of the execution petition by General Power of Attorney Sharad Aggarwal on behalf of Onkar Nath Aggarwal. Once, Onkar Nath Aggarwal has locus to proceed with the suit after being impleaded as legal heir of Shanti Devi, the objection that his General Power of Attorney could not file the execution, is not sustainable.

While dismissing the objections, it has been further observed that vide judgment and decree dated 18.03.2006, the judgment debtors-petitioners were directed to remove unauthorized construction within two months. The executing Court cannot go beyond the decree. The decree holder is entitled for execution of the decree in terms of the relief granted by the trial Court. The trial Court had decreed the suit of the plaintiff to the effect that he was entitled to possession of the suit property bearing plot Nos.16 and 17, Block B, Central Green, NH-3, NIT, Faridabad. The

defendants were directed to remove the unauthorized constructions within a period of two months.

After going through the impugned order passed by the executing Court, no illegality, much less perversity has been found therein warranting interference by this Court.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

10.12.2015
ajp