

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

**CR No.1332 of 2016 (O&M)
Date of Decision: 05.08.2016**

Harbans Lal

.....Petitioner

Vs

Vijay Kumar

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sukhvir Singh Sahu, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 07.01.2016 passed by Civil Judge, (Junior Division), Budhlada, District Mansa whereby objections raised by the petitioner were rejected.

[2]. Petitioner claimed that his inter party objections be decided after framing necessary issues between the parties.

[3]. The execution was filed on the basis of judgment and decree dated 28.11.2007 passed by Additional District Judge, Mansa. The petitioner-objector alleged that the decree was in-executable in nature. It was stated that the tatima prepared on mutation No.10912 was not prepared as per law whereas the mutation was sanctioned on 17.03.1988. The decree holder was

claiming ownership as per mutation in question. The decree holder did not disclose the number of houses constructed viz-a-viz the vacant area available at the spot till filing of the suit, nor he relied upon any site plan. The petitioner claimed that the decree holder was not sure about the ownership and possession of his property, therefore, the decree dated 28.11.2007 was not executable in nature and the objections filed by the judgment debtor/petitioner were required to be dealt with after framing proper issues.

[4]. Evidently, the judgment and decree in respect of which execution was filed had already attained finality. The pleas raised by the judgment debtor/petitioner were available to him in the main course of litigation.

[5]. Collusion was also alleged by the decree holder to show that the judgment debtor was all out to create hindrance in due execution of decree by creating false evidence by way of fabrication in collusion with revenue officials. In RSA No.189 of 2008, this Court had given the findings regarding existence of 10 feet wide public street on the eastern side of the property of decree holder just between the property of decree holder and the judgment debtor. The findings have since attained finality and was not open to judgment debtor to challenge the same by way of filing any objection in execution.

[6]. Perusal of judgment and decree dated 28.11.2007 passed by Additional District Judge, Mansa in appeal titled as Vijay Kumar Vs. Harbans Lal and others would reveal that the appeal was accepted with costs and the judgment and decree passed by the trial Court was set aside and suit for mandatory injunction and permanent injunction was decreed with a specific finding that there was a public street at the spot.

[7]. The judgment dated 06.05.2009 rendered by this Court in RSA No.189 of 2008 would further reveal that the appeal was dismissed and the judgment and decree passed by lower Appellate Court on 28.11.2007 was maintained. This Court while dismissing the appeal recorded the fact that existence of street was established with reference to statement of Harbans Lal who stated that the houses of Surinder Singh Sodhi and Surjit Singh were situated opposite to each other and there was a street in between. In cross examination, the witness had admitted that the door of the house of Surinder Singh Sodhi had opening in the street and house of Sodhi family was just adjoining to the plaintiff towards western side of the street. These facts were admitted and there was admission regarding existence of street on the eastern side. The Statement of Harbans Lal was recorded before the trial Court prior to framing of issues that they will not encroach upon the street, nor will prevent the

plaintiff from using the same. In view of such admission, the existence of street was found on the spot.

[8]. The existence of 10 feet wide street on the eastern side was unambiguous. The findings were duly confirmed by this Court in appeal filed by the Judgment debtor Harbans Lal. Since the judgment of this Court had already attained finality, such decision coupled with admission of Harbans Lal in his statement dated 28.03.2000 before the trial Court would falsify the objections now raised by the judgment debtor before the executing Court.

[9]. At one point of time during pendency of execution, learned counsel for the judgment debtor made a statement that judgment debtor has complied with the decree and thereafter, filed objections. The executing Court has commented upon the conduct of the judgment debtor that the judgment debtor is trying to obstruct the execution of decree by one way or the other. Since, the objections were inter party in nature, judgment debtor had unsuccessfully fought litigation up to this Court. The pleas were available to him during the regular proceedings. There is no such requirement of framing issues in every case. The objections filed by the judgment debtor/petitioner before the executing Court were totally misconceived.

[10]. In considered opinion of this Court, no interference can

be made in the revision petition as the executing Court is not expected to frame issues in all the objections filed by the judgment debtor. The objections being frivolous not necessarily to be adjudicated upon by the executing Court by way of following procedure. Resultantly, this revision petition is totally devoid of merits and the same is dismissed.

05.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No