

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

CR No.3405 of 2015(O&M)

Date of decision:18.10.2016

Mohinder Kumar deceased through his LRs Mohindro Devi and others
.....Petitioner

VERSUS

Desh Raj deceased through his LRs Janak Dulari and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Budhwar, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 16.10.2014 passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhari whereby application filed by the petitioner for execution of decree of injunction by issuance of warrants of attachment of the property of the judgment debtor(s) (in short 'JD') and providing police help has been dismissed.

Counsel for the petitioner has submitted that Mohinder Kumar (since deceased) now represented by his legal representatives filed a suit for permanent injunction restraining Desh Raj and others - respondents from interfering in possession of suit land. The suit was decreed vide judgment and decree dated 14.08.2002 and the appeal preferred by the JDs did not find favour with the first Appellate Court, thus, the decree passed by the trial Court has attained finality. It is further submitted that as the JDs disobeyed the decree of injunction by obstructing cultivating

possession of the decree holder, the instant application was filed for the relief prayed for but the same has been wrongly and illegally dismissed by the executing Court. To substantiate his contention, it is submitted that the executing Court in para 10 of the impugned order has held that Sandeep Kumar/decreree holder (DH1) has admitted in his cross examination that he had not filed any complaint but as a matter of fact, the proceedings under Section 107/151 of the Criminal Procedure Code, 1973 were initiated in the year 2010 vide DDR No.12 dated 29.07.2010 (Ex.DH8), sufficient to prove that Satish Kumar expressed his grievance against illegal action of the respondents/JDs and violation of the order of stay.

I have heard counsel for the petitioner, perused the paper-book particularly the various annexures appended with the petition as well as photocopy of the Calendera proceedings, made available by counsel for the petitioner during the course of hearing.

The executing Court on the basis of reply-cum-objections filed by the JDs and response thereto by the decree holder framed issues, permitted the parties to adduce evidence in support of their respective contentions and on a detailed consideration came to record a finding in favour of the respondents/JDs that they have not, in any manner, violated the judgment and decree passed in favour of Sh. Mohinder Kumar. The Calendera proceedings relied upon by the petitioner were initiated at the instance of one Satish Kumar but said Satish Kumar is neither the decree holder nor legal representative of Mohinder Kumar/decreree holder (since deceased). Even otherwise, there is no such finding recorded in those proceedings that JDs in any manner whatever interfered in possession of suit land by the decree holder. Counsel for the petitioner has failed to point out any tangible material on record in order to find fault in the impugned

order much less to hold that the executing Court committed any error, illegality or perversity warranting intervention.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in *limine*.

OCTOBER 18, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no