

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5599 of 2015 (O&M)
Date of decision : April 26, 2016

Smt. Lajwanti

..... Petitioner

Versus

Anoop Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. U. K. Agnihotri, Advocate
for the petitioner.

Mr. N.P.S. Kohli, Advocate
for the respondents.

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?

Amit Rawal, J (oral).

The petitioner-decree holder is aggrieved of the impugned order dated 26.5.2015 (Annexure P-1) whereby objections at the instance of L.Rs of judgment debtor Surinder Kumar purportedly filed under Order 21 Rule 99 and 58 CPC are allowed.

Mr. U. K. Agnihotri, learned counsel appearing on behalf of the petitioner submits that vide judgment and decree dated 7.2.2007, the suit for injunction had been decreed and the respondents-defendants were restrained from opening any door or constructing any kitchen in the courtyard towards North of plaintiff's

house No.43, Lal Kurti Bazar, Ambala Cantt.

The aforementioned objections were entertained by the trial court which were assailed in this Court vide CR No. 6983 of 2012 and this Court held that the objections filed by the L.Rs of deceased judgment debtor, are bound by the decree passed against deceased Surinder Kumar and despite the directions, the trial court vide impugned order allowed the objections and consigned the execution application to records after due compliance.

Mr. N.P.S. Kohli, learned counsel appearing on behalf of the respondents submits that rightly so the objections had been allowed and the execution application has been dismissed, for, the executing court has examined the statement suffered by the decree holder wherein it has surfaced that kitchen had already been constructed. At the best, plaintiff should have sought modification of the decree and cannot seek execution of the same by invoking the provisions of Order 21 Rule 32 CPC.

I have heard learned counsel for the parties, appraised the paper book. For the sake of brevity, operative part of the judgment reads thus:-

“It is ordered that the suit of the plaintiff is hereby decreed with costs. The defendant is restrained from opening any door or constructing any kitchen in the courtyard towards North side of the plaintiff's house No.43, Lal Kurti Bazar, Ambala Cantt.permanently.”

The objections at the instance of the L.Rs of

judgment debtor as stated above assailed in this Court and this Court while entertaining the revision petition aforementioned accepting the contention of the decree holder gave following observations:-

“Keeping in view the totality of facts and circumstances as discussed above, it is clear that the impugned order suffers from apparent illegality and there is merit in this revision petition. Sequelly, accepting the same, reversing the impugned order, the objection-petition is dismissed and the Executing Court is called upon to proceed further with the execution of the decree in accordance with law.”

The trial court, thereafter again accepted the objections by relying upon the statement of the decree holder way back in the year 2006 i.e. on 1.5.2006. The executing court cannot go behind the decree. The judgments and decrees of the court below are required to be honoured and respected. The aforementioned judgment and decree, though was assailed by filing a first appeal but the same was withdrawn on account of death of Surinder Kumar (since deceased). Nothing prevented the respondent-judgment debtor to move an application for modification of the judgment and decree or seek revival of the appeal.

Keeping in view the aforementioned observations, I am of the view that trial court has exceeded its jurisdiction, much less committed fallaciousness in going behind the decree while accepting the objections.

The impugned order is set aside. The objections filed on behalf of the respondents-judgment debtors are dismissed.

The execution application is ordered to be restored.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

April 26, 2016
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