

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

CR No.7723 of 2015

Date of decision : 01.03.2016

Smt. Dropa

...Petitioner

Versus

Iqbal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Abhilaksh Grover, Advocate for the petitioner.

Mr. Rakesh Kumar Sharma, Advocate for respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the order dated 14.07.2014 passed by the Additional Civil Judge (Sr. Divn.), Hodal allowing the application filed under Order 39 Rule 2 A CPC and order dated 19.10.2015 of the Additional District Judge, Palwal, whereby appeal filed against the same, has been dismissed.

Mr. Abhilaksh Grover, learned counsel appearing on behalf of petitioner-erstwhile defendants submits that respondents-plaintiff had filed a civil suit for permanent injunction seeking restraint order against the Gram Panchayat not to interfere in the possession of user of the property by

carving out the plots or constructing any temple on the suit property. In the aforementioned suit, interim order dated 24.02.2009 was passed and the operative part of the same reads thus:-

“9. On the basis of what has been discussed and observed above the application under Order 39 Rule 1 & 2 read with Section 151 CPC is allowed. Defendant Nos.1 to 3 are hereby restrained from changing the nature of the suit property mentioned in para No.1 of the plaint, in any manner, from raising any construction over it, from carving out any plots in the same and from preventing the plaintiffs or other Muslims of the village from using the same as Kabristan/gave-yard till the decision of the suit.”

The Gram Panchayat was sued through the petitioner being Sarpanch. His tenure was over in the year 2010. The respondents-plaintiffs alleged the disobedience/violation of the interim order and filed the application under Order 39 Rule 2-A CPC on 24.04.2009 which resulted into the conviction of the petitioner vide impugned order referred above. He further submits that respondents-plaintiff have failed to lead evidence with regard to the alleged disobedience/violation of the interim order. Though, the suit, aforementioned, ultimately decreed vide judgment and decree dated 17.10.2012.

He further submits that execution proceedings under Order 21 Rule 11 CPC has been initiated and the remedy if any for the decree holder was to seek the execution not in the manner and mode adopted. Moreover, no evidence has been led to show that petitioner on his own erected the shops. In the absence of the same, Courts below ought not to have allowed the petition while imposing punishment of civil imprisonment for one

month upon the petitioner.

Mr. Rakesh Kumar Sharma, learned counsel appearing on behalf of respondents-plaintiffs submits that it has been proved on record that 10 shops have been constructed by the Gram Panchayat, which fact is evident from the statement of respondent-plaintiff. On the basis of that, Courts below allowed the petition while imposing punishment as noticed above. No body can be above the law. The orders of the Court have to be regarded and respected and prays that there is no illegality and perversity in the order as the order is based on oral and documentary evidence.

I have heard learned counsel for the parties and appraised the paper book and of the view that petition deserves to be allowed for the reason that respondents have failed to lead any corroborative evidence vis-a-vis erection of the shops.

For the sake of brevity, operative part of the order reads thus:-

“15. Now to come upon the case in hand, AW1 Abdul Hakim in his affidavit Ex.AW1/A stated that despite the knowledge of the stay order dated 24.02.2009, the respondent Dropa has started construction in the land in dispute/kabristan on 21.04.2009 which has been done in collusion with the other respondents and violated the order of the Court. Despite stay order of the Court, the respondent has constructed 10 shops at DPC level. In his cross-examination, he stated that he did not know what has been written in the affidavit because he is illiterate. He has filed this case regarding Kabristan and he again stated that he has filed against Dropa Sarpanch which is regarding violation of the Court. The Court has given the stay in the year 2009. They have filed the suit when they

interfer in the Kabristan. He did not know as to what is the total area of Kabristan. Its area is 4 & 5 of 56 and he again stated that he is telling area 126 kanal and he is also telling 139 kanal.”

The aforementioned order lead to an irresistible conclusion that except the self-serving statement of PW1, no documentary evidence has been led to prove the alleged violation to bring the case within the realm of provision of Order 39 Rule 2-A of the Code of Civil Procedure.

I am of the view that order under challenge suffers from grave illegality, much less, perversity. It is established principles of law that in order to prove the disobedience, direct and cogent evidence has to be led as consequential effect, as per Article 21 of the Constitution of India, would affect the life and liberty of the person.

Keeping in view the aforementioned fact, I am of the view that respondent-plaintiffs have failed to prove the alleged disobedience of the interim order dated 24.02.2009 which is based upon assumption and presumption and which do not lead to sustain for want of direct and cogent evidence.

Accordingly, impugned orders dated 14.07.2014 and 19.10.2015 are set aside. Revision petition is allowed.

However, this will not preclude the respondent to seek the execution of the judgment and decree dated 17.10.2012 in accordance with law.

01.03.2016

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**(AMIT RAWAL)
JUDGE**