

ESA- 25 of 2014(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

ESA- 25 of 2014(O&M)

Date of Decision:20.10.2016

Gram Panchayat Sadulpur Kalota

---Appellant

vs.

Shiv Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.M.S.Dhami, Advocate
for the appellant

Mr. S.K.Singla, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal (ESA) has been directed against orders dated 11.2.2013 passed by the Executing Court and dated 19.3.2014 passed by the Additional District Judge, Hoshiarpur whereby the objection petition preferred by the appellant was dismissed and the order passed by the Executing Court was affirmed in appeal.

Counsel for the appellant would submit that Shiv Ram,

respondent No. 1 filed a suit for vacant possession after removing super-structure, if any, of land measuring 3 kanals out of 27 kanals 9 marlas, detailed in headnote of the judgment (Annexure A-1) in which Kartar Singh and others (private parties) were arrayed as defendants. The suit was decreed vide judgment and decree dated 21.3.2005. Shiv Ram filed an application for execution of the decree against Kartar Singh and others and in the execution proceedings, the appellant filed an objection petition that came to be dismissed by the Executing Court vide order dated 6.3.2010. The appellant Gram Panchayat preferred an appeal, decided by the Additional District Judge (Ad hoc), FTC, Hoshiarpur vide order dated 27.3.2012 (Annexure A-2) whereby the order dated 6.3.2010 was set aside and the case was remitted to the Executing Court with directions to decide objections of the Gram Panchayat afresh after framing of issues and giving both the parties an opportunity to adduce evidence. Subsequent thereto, the Executing Court framed an issue, permitted the parties to adduce evidence in support of their respective claims, dismissed the objection petition vide order dated 11.2.2013 but the said order neither makes reference to the issue framed by the Executing Court nor findings were recorded by the Court on the said issue, therefore, the order passed by the Executing Court was in

clear violation of the directions issued by the Court of Appeal vide order dated 27.3.2012. It is further argued that the Court of Appeal despite noticing that the Executing Court has decided the objections without making reference to any issue, in place of remitting the matter to the Executing Court for decision afresh, has decided the appeal on merits, therefore, order passed by the Court of Appeal cannot be allowed to sustain. It is prayed that the impugned orders may be set aside and the matter may be remitted to the Executing Court for decision afresh by recording specific finding on the issue(s) framed in pursuance of directions issued by the Court of Appeal vide order dated 27.3.2012.

Counsel for the contesting respondent, on the contrary, has submitted that the land in question is situated in village Hoshiarpur Kalota (now Bahadurpur Kalota), Tehsil Mukerian, District Hoshiarpur but the objection petition has been preferred by Gram Panchayat of adjoining village namely Sadulpur Kalota. It is further submitted that the Executing Court complied with the order of the Court of Appeal, framed an issue, permitted the parties to adduce evidence but the mere fact that the said issue does not find reference in the order dated 11.2.2013 passed by the Executing Court is not sufficient to accept submission of the appellant that the Court

committed breach of the order /direction issued by the Court of Appeal. It is further argued that the Court of Appeal took cognizance of the issue framed by the Executing Court and on a detailed consideration of the materials on record rightly negated plea of the appellant, thus, contention of the appellant that the matter is liable to be remitted to the Executing Court is nothing but an attempt to delay execution of the decree passed in favour of the respondent as back as in the year 2005. In the alternative, counsel has submitted that in case plea of the appellant is accepted, some time bound direction may be issued to the Executing Court for decision of the objections filed by the appellant.

I have heard counsel for the parties, perused the paper book and the orders impugned.

There is no denial that the Executing Court framed an issue and permitted the parties to adduce evidence in pursuance of the order dated 27.3.2012 passed by the Court of Appeal in the first round of litigation. It is also an undisputed position of the case that order dated 11.2.2013 passed by the Executing Court does not make reference to the issue framed by the Court, therefore, no findings were recorded by the Executing Court on the said issue though the objection petition preferred by the Gram Panchyat was

ordered to be dismissed. A relevant extract from the order passed by the Executing Court, reads as follows:-

“.....that the Local Commissioner report Ex. RDHW/A (also written as Ex. DH/1) that the encroachment of 4 marlas 4 Sarsahi shown made by the Gram Panchayat and this report of the Local Commissioner not set aside. The judgment and decree Ex. OD1 is admitted between the parties, only contention of the Ld. Counsel for the objector is that the Gram Panchayat was not party in that suit, in which the judgment and decree Ex. OD1 passed but from the perusal of the report of Local Commissioner it is clear that the objector Sangara Singh was present at the time of demarcation made by the Local Commissioner retired Naib Tehsildar. He also admitted the fact that he is Sarpanch of the village since 1993. It shows that the Gram Panchayat had knowledge of the litigation at the time of demarcation. It means Shingara Singh was the Sarpanch of the village during the pendency of the suit which was filed by the decree holder on dated 16.11.1999 the Ld. Predecessor of this Court relying upon the local commissioner Ex. RDHW/A (Ex.

DH/1) and given finding that the Gram Panchayat of the village Sadulpur Kalota has illegally brick paved the passage measuring 4 kari in the land belongs to the decree holder Shiv Ram, when the civil court has already given the finding on the basis of the report of the Local Commissioner which prepared in the presence of the present objector Shingara Singh, the Sarpanch of the village Sadulpur Kalota, then the objections of the objector are no sustainable. Accordingly, the objections are dismissed.”

The Executing Court relied upon report of the Local Commission Ex. RDHW/A or Ex. DH/1 on the ground that Shigara Singh, Sarpanch of the village was present at the time of demarcation made by the Local Commission i.e. retired Naib Tehsildar, therefore, the Gram Panchayat had knowledge of litigation at the time of demarcation. Admittedly, the Gram Panchayat Sadulpur Kalota was not a party to the lis that culminated into judgment and decree dated 21.3.2005 in which some Local Commission was appointed by the Court for conducting demarcation on the spot. As the Gram Panchayat was not a party to the litigation initiated at the instance of Shiv Ram, there was no occasion for the Gram

Panchayat to say something about the report submitted by the Local Commission. The Executing Court not only failed to make reference to the issue framed for determination but the order does not make reference much less a detailed one to the evidence adduced by the parties in support of their respective claims. A perusal of the order passed by the Executing Court leaves no manner of doubt that the Court adopted a very casual approach and passed a cryptic order while disposing of the objection petition. The Court of Appeal despite noticing that the Executing Court has failed to take note of the issue framed for determination and without advertent to the evidence adduced by the parties has disposed of the objection petition in a slipshod manner, proceeded to decide the appeal on merits in place of setting aside the order passed by the Executing Court and remitting the matter to the said Court for decision afresh by making reference to the issue framed, evidence adduced by the parties and thereafter to record its findings in accordance with law.

In this view of the matter, I find merit in contentions of the appellant that the impugned orders passed by the Courts below cannot be allowed to sustain and liable to be set aside and the matter needs to be remitted to the Executing Court for decision afresh.

For the foregoing reasons, the appeal is allowed, the impugned orders are set aside and the matter is remitted to the Executing Court for decision of the objection petition afresh, in accordance with law. The parties through their counsel are directed to appear before the Executing Court on 29.11.2016. The Executing Court shall dispose of the objection petition within a period of two months from the parties putting in appearance.

Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

21.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No