

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 1400 of 2017

Date of decision:- February 27, 2017

RAMBILAS

....PETITIONER..

VERSUS

HAZARI LAL

....RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Kanwal Goyal, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in this revision petition is to the orders dated 16.05.2015 (Annexure P-2) and 02.11.2016 (Annexure P-1) passed by Id. Civil Judge (Senior Division), Narnaul and Additional District Judge, Narnaul respectively whereby objections (Annexure P-3) preferred by respondent-decree holder have been dismissed.

2. The facts giving rise to the instant list are that respondent-decree holder filed a suit for permanent injunction restraining the petitioner-defendant from encroaching upon any part of the passage and Government land marked by letters ABCDEF shown in red colour depicted in the head note of the plaint and site plan attached, by way of raising any type of construction as well as for mandatory injunction directing the petitioner-defendant to remove the construction, if any, raised during the pendency of the suit. The said suit was dismissed by the trial court vide judgment and

decree dated 12.09.2008. Feeling aggrieved against the said judgement and decree, the respondent-plaintiff preferred an appeal, which was allowed vide judgement and decree dated 09.06.2010 by Additional District Judge, Narnaul. Consequently, the suit of the plaintiff-respondent for permanent injunction as well as mandatory injunction prayed for was decreed. The operative part of the judgment dated 09.06.2010 reads as under:-

“Resultantly, in view of the discussion above made and for the foregoing reasons, the findings of the impugned judgment and decree are reversed and set aside and consequent upon the reversal of the findings, the present appeal is hereby accepted and the suit of the plaintiffs is hereby decreed directing the defendant to remove the encroachment as shown by defendant in his own site plan (Ex.DW3-A) within two months from today.”

3. Since, no appeal or revision was preferred against the judgment and decree dated 09.06.2010, it attained finality. Since, encroachment was not removed by the petitioner-JD in consonance with the judgment and decree dated 09.06.2010, the respondent-decree holder was constrained to file execution application for the removal of the encroachment as directed by the Court of Additional District Judge, Narnaul vide judgment and decree dated 09.06.2010. During the pendency thereof, the petitioner-JD preferred objection petition, which was dismissed by the 1d. Civil Judge (Senior Division), Narnaul vide its order dated 16.05.2015.

4. Dissatisfied with the said order, the petitioner/JD preferred an appeal and that was also dismissed vide impugned order dated 02.11.2016, which has necessitated the filing of the instant petition.

5. The main contention of learned counsel for the petitioner is that

the trial court has not considered the true aspects of the case. As per the judgment and decree dated 09.06.2010 passed by Additional District Judge, Narnaul, encroachment was to be removed as depicted by petitioner-defendant in a site plan Ex.DW-3/A but to the utter surprise, there is no such site plan as Ex.DW-3/A available on the file. In the absence of the site plan DW-3/A on record, the decree of the court cannot be executed.

6. It has further been contended by learned counsel for the petitioner that the construction of the petitioner/JD i.e. Nohra/Guwahra is already existing even prior to the filing of the civil suit and he has been in continuous physical possession thereof much prior to the filing of the suit but ignoring all these aspects, the trial court had dismissed the objections.

7. Another contention put forth by learned counsel for the petitioner is that the suit property belongs to the Punjab Wakf Board and the petitioner/JD is in possession thereof as a lessee. On these grounds, the impugned order(s) passed by both the courts has been challenged.

8. This Court has given a deep thought to the submissions made by learned counsel for the petitioner but find the same to be of without any legal and factual substance.

9. Concededly, there is no site plan as Ex.DW-3/A on the judicial file, in which, judgment and decree dated 09.06.2010 was passed. It appears that due to some inadvertence or typographical mistake, the site plan was mentioned as DW-3/A instead of DW-3/B. Mere mentioning of site plan as Ex.DW-3/A in place of DW-3/B does not make the judgment and decree un-executable. In fact, close scrutiny of the file reveals that DW-3/A is the affidavit and the site plan is Ex.DW-3/B. So, it can be said that there is

nothing material in the objection with regard to the site plan.

10. As far as the contention of learned counsel for the petitioner that suit property belongs to the Punjab Wakf Board and the petitioner/JD is in possession thereof as a lessee are concerned, the same cannot be agitated during the execution proceedings because the executing court cannot go behind the decree. Moreover, these aspects have already been dealt with and disposed of by the courts below while passing the judgment and decree dated 09.06.2010, which is under execution. The objection petition is nothing but a novel device adopted by the petitioner-JD to delay and defeat the execution of the decree dated 09.06.2010.

11. In view of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, the same is dismissed.

12. No order as to costs.

February 27, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No