

CR No. 1916 of 2015

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1916 of 2015

DATE OF DECISION:27.01.2017

Shankar (deceased) through his LRs

.....Petitioners

Versus

Om Parkash @ Omi and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. M.S. Uppal, Advocate
for the petitioners.

Mr. Amit Gupta, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 9.3.2015 (Annexure P-5) passed by Civil Judge (Senior Division), Faridabad, whereby, the objections filed by the petitioners under Section 47 CPC have been dismissed.

Respondent No.1-Om Parkash @ Omi filed civil suit No. 116/91/98 for permanent as well as mandatory injunction restraining the petitioners from interfering in his peaceful possession, use and occupation of the suit land. Said suit was decreed vide judgment dated 16.9.2005 by Civil Judge (Senior Division), Faridabad and the petitioners-defendants were restrained from interfering in the peaceful possession, use and

occupation of the suit land as mentioned in para No.1 of the plaint. The petitioners-defendants were also directed to remove the shed constructed by them on the disputed plot marked with letters RSTU in the site plan Ex. P-2 within a period of 15 days at their own cost.

Against the aforesaid judgment and decree dated 16.9.2005, the petitioners-defendants filed an appeal, which was also dismissed on 28.4.2008 and as such the judgement and decree dated 16.9.2005 attained finality.

Respondent No.1 filed an execution petition for execution of the judgment and decree dated 16.9.2005. Objections under Section 47 CPC were filed by the father of the petitioner No.2, namely, Bir Singh (now deceased). Reply to the objections was filed. The executing Court vide order dated 9.3.2015 dismissed the objections by holding that by way of mandatory injunction relief had been granted to use and occupy the land by respondent No.1 (decree holder). The impugned order dated 9.3.2015, whereby, objections were dismissed is subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that in the suit respondent No.1-plaintiff had specifically prayed that in case the petitioners-defendants succeed in dispossessing respondent No.1-plaintiff then the possession may be restored to him. The trial Court had passed the decree in favour of respondent No.1-plaintiff and defendants were restrained from interfering in his peaceful possession, use and occupation of the suit land. Learned counsel further submits that the executing Court cannot go beyond the judgment and decree and while passing the impugned order the objections filed by the petitioners have not been taken into

consideration.

Learned counsel for the respondents submits that the decree is passed on the basis of judgment of the trial Court and while dismissing the objection filed by the petitioners, the executing Court has not gone beyond the decree. He further contends that a well reasoned order has been passed, whereby, objections filed by the petitioners have been dismissed.

Heard the arguments advanced by learned counsel for the parties and have have also gone through the judgment and decree passed by the trial Court, objections, reply to the objection as well as impugned order. The relevant portion of impugned order is reproduced as under:-

“After hearing the respective submission of learned counsel and after perusal of the aforementioned order, it is clear that plaintiff/decreed holder was allowed to use and occupy the suit property detailed in para No.1 of the plaint. It is also clear that Court cannot go beyond the decree. It is further clear that this order was challenged by the defendants but the appeal was also dismissed on 28.4.2008. Hence, the judgment and decree dated 16.9.2005 has become final. JD No. 1 has not brought any record to prove the tin shed shown in the plot marked with letters RSTU has been removed by Jds. It is clear that Court is bound to execute the decree as it has been passed. It is also clear that possession of the plaintiff was also admitted by court over the plot in question. Once possession has been admitted, plaintiff is also allowed to use and occupy the possession detailed in para No.1 of the plaint. Hence, in view of law laid down in case titled “Ram Nurti Versus Smt. Sarla Devi” 1998

(2) PLJ page 641 (P&H) as well as “Habib Fatma Versus Mohd. Shafi” 1990 C.C.C. Page 705 (SC), Jds cannot be allowed to encroach upon the plot of the plaintiff shown with letters RSTU, JDs are also entitled to remove the tin shed constructed over the plot.

Learned counsel for the JD has also relied upon the law laid down in case “Gurdev Singh Versus Narain Singh” AIR 2009 S.C. Page 630. I have perused the aforementioned authority. This authority is not applicable to the present facts and circumstances of the case because by way of mandatory injunction, relief was also granted to use and occupy the land by decree holders. Hence, objections filed by JDs are not sustainable and sale are dismissed”.

As per the judgment and decree passed by the trial Court, the plaintiff was allowed to use and occupy the suit land as mentioned in para No.1 of the plaint. It cannot be said that the objections have not been considered in the right prospective. The objections filed by the petitioners are dismissed in view of judgment and decree passed by the trial Court. Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and the present petition being devoid of any merit is hereby dismissed.

January 27, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes