

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 212

Civil Revision No.213 of 2013 (O & M)
Date of Decision: May 22, 2017

Prabhati Lal

..... PETITIONER

VERSUS

Prabhu & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. S.S. Kharb, Advocate, for the petitioner.

Mr. Vivek Goyal, Advocate, for respondent Nos.1 to 3, 9,
10 and 12.

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Jaspal Singh, J

1. By virtue of instant revision petition, preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated November 17, 2012 passed by the Additional Civil Judge (Senior Division), Narnaul, in execution of judgment & decree dated March 02, 1998 passed by the Civil Judge (Junior Division), Narnaul, as well as order dated May 25, 1999 passed by the District Judge, Narnaul.

2. Undisputed facts are that Decree Holder – Prabhati Lal filed a suit for permanent injunction against Judgment Debtors, thereby claiming 1/3rd share in Khasra No.143. The Decree Holder also sought injunction against Judgment Debtors from raising construction more than their share in

decreed the suit of plaintiff vide judgment & decree dated March 02, 1998 thereby restraining the JDs from raising construction without getting the plot partitioned. Though, JDs had filed an appeal against the aforesaid judgment & decree but that was also dismissed vide judgment & decree dated May 25, 1999. Thereafter, DH moved an execution application under Order XXI Rule 32 CPC alleging that he alongwith JDs was owner in possession of Khewat No.2, Khatoni No.169 mustil and Killa No.143, total land measuring 5 marlas, situated at village Chapra Bibipur, Tehsil Narnaul as per jamabandi for the year 1988-89 and after that, JDs were bent upon to raise construction on the western side of the plot after removing/demolishing the chapar of plaintiff – DH, thereby defying the judgment & decree passed by the courts below. Necessary action under Order XXI Rule 32 CPC was sought to be taken against the JDs. Subsequent thereto, JDs were also restrained from raising construction on Khasra No.143 on June 04, 2005.

3. On June 13, 2005, an application was moved by the DH for appointment of Local Commissioner to ascertain the existing state of affairs at the spot. Accordingly, Mr. K.C. Saini, Advocate was appointed as Local Commissioner to inspect the spot who submitted his report dated June 14, 2005. A perusal of the aforesaid report submitted by the Local Commissioner depicted some fresh construction at the spot. Accordingly, a notice was issued to the JDs who appeared in response thereto.

4. JDs also moved an application for appointment of Local Commissioner which was allowed by the executing court vide order dated July 19, 2008, in pursuance of which, Naib Tehsildar was appointed as Local Commissioner who submitted his report dated August 08, 2008 which revealed that JDs were in possession of the property comprised in Khasra

5. Since, JDs had raised new construction after passing of judgment & decree dated March 02, 1998 passed by the Civil Judge (Junior Division), Narnaul, and considering the reports of Local Commissioners, the JDs were directed to remove the construction within a period of one month vide order dated March 16, 2009.

6. Here, it would be pertinent to mention that the judgment debtors preferred a revision petition challenging order dated March 16, 2009 before this Court and while disposing the said petition, an effort was made by this Court to get the matter amicably settled. At that time, JDs agreed to the terms & conditions in respect of the compromise. There was also a clear recital in order dated December 11, 2009 that in case JDs failed to comply with terms & conditions of compromise arrived at in this Court, the revision petition preferred by them shall be deemed to be dismissed and order dated March 16, 2009 vide which new construction was ordered to be demolished, shall be implemented. The JDs did not comply with the terms & conditions of the aforesaid compromise. As such, the revision petition preferred by the JDs is deemed to be dismissed. Accordingly, order dated March 16, 2009 is still operative.

7. It would also not to be out of place to mention here that while passing impugned order dated November 17, 2012, learned trial court has travelled beyond its jurisdiction and has substituted its own view. Infact, judgment & decree dated March 02, 1998 for permanent injunction passed by Civil Judge (Junior Division), Narnaul has become final and conclusive as an appeal preferred against the aforesaid judgment & decree was also dismissed. Similarly, order dated March 16, 2009 has also become final and conclusive as the revision preferred against the said order also stood

arrived at in this Court. Moreover, it were the judgment debtors who agreed to remove the construction at Marks 'G' and 'I' in Khasra No.143. As per judgment & decree dated March 02, 1998 as well as order dated March 16, 2009, the DH is entitled to get possession of 50 square yards out of Khasra No.143, that too, after getting the illegal construction demolished by the JDs. It is well settled proposition of law that executing court cannot go beyond the decree and substitute its own view. Thus, words appearing in impugned order dated November 17, 2012, to the effect that "In case DH does not appear to get the possession, symbolic possession be given to DH as the property in question is still in the joint ownership and possession between the JDs and DH and no partition was effected" are ordered to be deleted from the order. The executing court is directed to execute the decree in question in terms of the observations made in this order.

8. With the above modification in impugned order dated November 17, 2012, the instant petition stands disposed of.

May 22, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No