

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 3110 of 2017 (O&M)

DATE OF DECISION:02.05.2017

Baljinder Singh

.....Petitioner

Versus

Lakhbir Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. BS Jaswal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 14.10.2016 (Annexure P-2) passed by Additional Civil Judge (Senior Division), Kapurthala, vide which, the application filed by the petitioner for demarcation of the land and to recall the warrant of possession has been dismissed.

Briefly, the facts of the case as mentioned in the petition, are that respondent Nos.1 to 3-plaintiffs have filed a suit for possession of land measuring 23 kanals and 11 marlas comprised in Khewat No. 12, Khatauni No. 38 Khasra No. 7//18/8-0, 23/7-11, 24/4-0, 25/4-0 situated in village Mand Allahbad Tehsil Bholath District Kapurthala as per jamabandi for the year 2002-03 along with fittings and fixture and all rights appurtenant

thereto. Said suit was contested by respondent No.4-defendant and the same was decreed in favour of respondents No.1 to 3 vide judgment and decree dated 15.9.2012. Respondents No.1 to 3 filed execution application to get possession against respondent No.4. During pendency of the execution petition, the petitioner filed objections but the same were dismissed. Thereafter the petitioner filed an application for demarcation of the land and to recall warrant of possession, which was dismissed vide order dated 14.10.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the impugned order has been passed without application of judicious mind and the application for demarcation of the land and to recall warrant of possession has been dismissed being rendered infructuous, as warrant of possession has already been issued. Learned counsel further submits that it would be in the interest of justice in case demarcation is done before execution of warrant of possession to show as to which party is having possession on which part of the land. Learned counsel also submits that in case land is not demarcated, the petitioner would suffer an irreparable loss, which cannot be compensated in any manner.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order and other documents available on the file.

The facts relating to filing of suit, passing of decree in favour of respondents No.1 to 3, dismissal of objections filed by the petitioner and also moving of an application for demarcation and its dismissal thereof are not disputed. It is also not disputed that warrant of possession has already

been issued. As per case of the petitioner, he is in actual cultivating possession of the land comprised in Khewat/Khatauni No. 28/22/46 Khasra No. 12//3/(6-0), 12//4/(8-0), 12//7min (6-2), 12//8 (4-9) situated within the revenue estate of village Mand Allahbad, Tehsil Bholath, District Kapurthala as per jamabandi for the year 2012-13 and has nothing to do with the land regarding which warrant of possession has been issued. The petitioner has prayed for getting the land demarcated only on the ground that under the garb of warrant of possession, the other party may take possession of his land. Said application has been dismissed by the trial Court on the ground that objections have already been dismissed and executing Court cannot go beyond the decree. Accordingly, application filed by the petitioner was dismissed being infructuous as warrant of possession had already been issued after dismissal of objections.

No doubt, the executing Court is to execute the decree on the basis of judgment passed by the trial Court but it is also not disputed that the objections were filed by the petitioner in the execution application and the same were dismissed. Subsequently warrant of possession was issued. It appears that the application for demarcation of the land has been filed just to delay the proceedings. In case the petitioner was having any grievance or demarcation of the land was necessary then the application should have been filed during pendency of the trial. This is not the stage to file said application for demarcation of land. It has been held by Hon'ble Apex Court in **Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and others** AIR 1970 (SC) 1475 that the Executing Court cannot go beyond the decree between the parties or their representatives. It must take the decree according to its tenor and cannot entertain any objection even in case the

decree was not correct in law or in facts until it is set aside by an appropriate proceedings in appeal or revision. Even in case the decree is erroneous, still it is binding between the parties. The executing Court cannot question the legality of the decree even if it was passed by a Court having no jurisdiction.

In view of the facts and law position explained above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is hereby dismissed.

May 02, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes