

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5451 of 2017

Date of Decision: 18.08.2017

Nanak and others

.....Petitioners

Vs.

Azad and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.S.K.Verma, Advocate, for the petitioners.

RITU BAHRI, J. (ORAL)

The petitioners have come up in revision for setting aside the order dated 18.07.2017 (Annexure P-7) passed by Executing Court, Nuh by which application for appointment of Local Commissioner filed by the petitioners had been dismissed.

The plaintiffs had filed a suit for permanent injunction restraining the defendants from interfering into the peaceful possession use and occupation of the plaintiff's over the suit property and vide judgment dated 22.04.2015, the suit filed by the Azad and others for permanent injunction has been decreed. The suit of the plaintiff has been decreed as per revenue record i.e. Jamabandi for the year 2005-06 as it reflected that the plaintiffs are co-owner/co-sharer and in joint possession over the suit land. As per Section 44 of the Punjab Land Revenue Act, 1887, and as per judgment in the case of **Bhoop Singh vs. Financial Commissioner, Haryana and others, 2006(1) Local Acts Reporter 464**, there is a presumption of correctness in favour of entries in the Records of right until

the contrary was proved or a new entry was lawfully substituted therefore.

The defendants had failed to prove that they were owner and in possession over the suit land since 1994 as they purchased suit land from GPA of the real owner of the suit land from GPA of the real owner of the year 1994. the photographs D2 to Ex.D15 and documents Mark-A to Mark R could not be made basis as it was not helpful to the defendants because on the basis of same it could not be presumed that these photographs belongs to the suit property. In fact, the defendants could have got examined the photographer by whom these photographs were taken and no material witness could have given exact details of the property of which photographs were taken by the defendants.

After passing of the aforesaid judgment and decree respondents/deGREE holders filed execution under Order 21 Rule 32 of CPC and for summoning and punishing the petitioners/JD for disobedience of judgment and decree dated 22.04.2015 for illegal encroachment and raising new construction over the suit property. The photocopy of the Execution Petition dated 01.10.2015 was placed on record as Annexure P-2. Thereafter petitioner/JD appeared before the Executing Court and filed objections that they had not made any of disobedience and raised any new constructions as alleged in the execution petition. Petitioners/JD also contended that they have been filed a suit for declaration and injunction against the decree holders and the said suit is still pending in the Court. The photocopy of the objection filed by the petitioners/JD was annexed as Annexure P-3. Thereafter an application (Annexure P-4) dated 20.02.107 was filed by the respondent/defendants for passing the orders to put the petitioners/JD in civil imprisonment for disobedience of the judgment and decree. Thereafter an application for appointment of local commission filed

by the plaintiff Annexure P-5 and reply to the same was made as Annexure P-6. After considering the applications and reply, a reasoned order has been passed.

The application has been dismissed on the ground that the executing Court is still collecting the evidence as to who is in actual possession of the suit land. While taking the suit of the plaintiff, the trial Court has rightly dismissed the application as the defendants had measurably failed to show the general power of attorney to the actual owner. In paragraph 25 of the judgment of the trial Court (Annexure P-1) it has been observed that no document was there which may prove the fact Raj Karan was general power of attorney of Mahendery Devi and being GPA and he transferred the land of Mahenderi Devi in favour of defendant No.1. The defendant were tried to prove the case on the basis of oral evidence with receiving the amount in favour of respondent. The said receipt is not a conclusive proof of ownership. The order further shows that decree holders have been facing various other litigations.

So in the light of the discussion, the orders dated 18.07.2017 (Annexure P-7) passed by Executing Court, Nuh does not reflect any material irregularity or perversity which warrant interference as the application has been rightly dismissed for appointment of local commissioner. Hence the present revision stands dismissed.

(RITU BAHRI)
JUDGE

18.08.2017

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No