

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.6678 of 2017(O&M)

Date of decision: 27.9.2017

Gaurav Bajaj

....Petitioner

VERSUS

Narender Kumar (since deceased) through his LRs and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Arun Sharma, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 18.08.2017 passed by the Additional Civil Judge (Senior Division), Pehowa whereby direction has been issued that possession of steel khokha be handed over to the decree holder / plaintiff in compliance with the decree dated 06.11.2008 passed by the Additional Civil Judge (Senior Division), Pehowa and Court issued warrants of possession for the purpose.

Counsel for the petitioner has submitted that Ms. Chetna Chaudhary, Tehsildar, Pehowa, appeared before the executing Court, in response to the show cause notice dated 31.07.2017 and got recorded her statement (Annexure P-3) clearly stating that as per the demarcation, possession has been handed over to the decree holder but some part of khokha exists not on land of the decree holder but on the land of national highway and that part of khokha has no concern with the decree holder. It is argued with vehemence that despite a statement to this effect got recorded by Ms. Chetna Chaudhary and the demarcation report (Annexure

P-5) prepared by the Kanungo (retired), the executing Court has committed a gross error rather illegality by issuance of directions to hand over possession to the decree holder in execution of warrants of possession issued by the Court while ignoring the objections filed by the petitioner.

Sh. Jagdish Manchanda, Advocate, has caused appearance on behalf of the respondent and has supported the impugned order with the submission that litigation between Narender Kumar son of Vas Devi (decree holder) and Amar Lal son of Boota Ram, father of the petitioner pertains to steel khokha measuring 9 x 17 square feet, detailed in para 1 of the plaint. In the suit, Amar Lal - defendant filed the written statement and raised a plea that khokha in dispute is not on land of the plaintiff and plaintiff has produced a wrong site plan dated 08.06.2004. It was also averred that the plaintiff has no concern with the steel khokha as the defendant is owner in possession of the said khokha wherein electricity connection is in the name of brother of the defendant. It is argued with vehemence that only dispute between the parties was with regard to entitlement of the decree holder (since deceased) to take over possession of the khokha in question, therefore, the petitioner cannot be permitted to agitate that a part of khokha is located on land belonging to national highway. The last submission made by counsel is that the decree passed by the trial Court on 06.11.2008 has attained finality up to Hon'ble the Supreme Court and the executing Court is bound to execute the decree as it is because it cannot go beyond the decree passed by the trial Court.

I have heard counsel for the parties, perused the paper-book particularly the various annexures appended with the petition.

The executing Court has issued warrants of possession in execution of the decree passed by the trial Court that has attained finality

up to the highest court. On a query by the Court, counsel for the petitioner is not in a position to point out any materials on record whereby a direction had been issued by the executing Court for conducting any demarcation on the spot, reference whereof has been made by Ms. Chetna Chaudary, Tehsildar, Pehowa in her statement (Annexure P-5). On the contrary, counsel for the petitioner would inform that an application was filed by the petitioner for conducting demarcation at the spot and in pursuance thereof an order was made by the Naib Tehsildar Ismailabad for conducting demarcation by the Kanungo. It is surprising that the revenue authorities in place of honouring the decree passed by a competent Court of law that has otherwise attained finality up to the Apex Court have started creating evidence in favour of the JD or his son to assist them in their mala fide attempt to create obstacle in execution of the decree in letter and spirit. Under the circumstances, the executing Court has rightly ignored any report of demarcation or statement of Ms. Chetna Chaudhary, Tehsildar, Pehowa by issuing directions for delivering possession of steel khokha to the decree holder in execution of warrants of possession to be issued by the Court. It appears that son of the JD, without having any independent right in the property, has come forward so that the decree does not reach fruition.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

SEPTEMBER 27, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no