

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

**Civil Revision No.822 of 2016 (O&M)
Date of Decision: 30.08.2017**

**Bhagwana (since deceased) through LRs.
.....Petitioners**

Vs

**Samunder Singh (since deceased) through LRs
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners.

Mr. V.K. Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners/legal representatives of Bhagwana have filed this revision petition against the order dated 17.09.2015 passed by the Civil Judge (Sr. Divn.) Jhajjar whereby application filed by the plaintiff Bhagwana for implementation of order dated 16.03.2012 was dismissed.

[2]. Brief facts are that the plaintiff Bhagwana filed a civil suit for permanent injunction with consequential relief of mandatory injunction alleging that he was owner in possession of plot comprised in *Khewat* No.18/16 min, *Khatoni* No.18, min,

Khasra No.397 (0-11) situated within the revenue estate of village Kasni, Tehsil and District Jhajjar as per *jamabandi* for the year 2003-2004. The said plot was marked by letters 'ABCD' in the site plan. In the site plan attached with the suit the plaintiff/petitioner projected the disputed portion as 'ABFE'.

Following prayer was made in the said suit:-

“It is, therefore, prayed that the suit of the plaintiff may please be decreed with cost in favour of plaintiff and against the defendant thereby restraining the defendant, his agents, associates, representatives etc. permanently from interfering into the peaceful ownership and possession of plaintiff over the suit property and from and changing the nature and making encroachment over any part of suit land by raising any sort of construction thereof in any manner specifically on the portion marked by letters ABEF delineated in red colour in the site plan.

It is further, prayed that if the defendant is succeeded in changing the nature as well as making encroachment over the suit land by raising any sort of construction over any part of suit land, in any manner, then the same illegal construction may kindly be removed by passing a decree of Mandatory Injunction and vacant possession be delivered to the plaintiff.

Any other relief which the Hon'ble court deems fit and proper may also be awarded to the plaintiff.”

[3]. Suit was contested by the defendant that he was owner in possession of plot No.399 measuring 2 *Kanals* comprised in *Khewat* No.1/1, *Khatoni* No.1. Defendant denied that he wanted

to interfere in the possession of the plaintiff or made any encroachment by raising the construction in any manner. Defendant claimed that he was in peaceful possession of the plot No.399 and the portion marked by letters 'ABEF' was part of the plot No.399 to which plaintiff had no concern. The defendant had already made boundary wall to his plot No.399 and the plaintiff himself was interfering in the ownership and possession of the defendant over his plot No.399. Claim of the plaintiff was denied altogether.

[4]. On 16.03.2012, learned counsel for the defendant made a statement before the Court to the following effect:-

“Present: Sh. Manoj Gahalwat counsel for defendant

Stated that I will not do any kind of construction in plot no.397 and I will not interfere in the same. I have a plot of my own bearing no.399, which starts from 14 karam i.e. 77 feet from the firni, I will do construction only in that.”

[5]. On the basis of aforesaid statement, the Presiding Officer, Daily Lok Adalat, Jhajjar passed the order dated 16.03.2012 to the following effect:-

“Reply has been filed. At the stage of submitting argument on injunction application the counsel for the defendant got the statement recorded to the effect that defendant shall not be raising any construction upon the plaintiff's property. His all construction shall be limited to the area of his ownership in plot no.399 which is 14 Karam i.e.

77 feet from village phirni. In view of the said statement, the counsel for plaintiff has prayed for withdrawal of the present suit. Consequent thereof suit is hereby ordered to be dismissed. Defendant is directed to remain bound by his said statement. File be consigned to record.”

[6]. Thereafter the plaintiff filed an application for implementation of order dated 16.03.2012. At one point of time, the trial Court passed the order dated 04.08.2015 thereby appointing the Tehsildar Jhajjar as Duty Magistrate to get effected the construction of the wall upto an extent of 77 feet in length from edge of *firni* towards the house of defendant. The Duty Magistrate was held entitled to obtain assistance of the police by moving an application in advance to the SHO, Police Station Jhajjar.

[7]. An application was filed by the defendant for appointment of Local Commissioner to demarcate the plot of judgment-debtor and also to demarcate the *firni* of the village which runs adjacent to plot No.397 of the decree-holder. The said application was opposed by the plaintiff. The same was dismissed along with the application for implementation of order dated 16.03.2012.

[8]. Evidently, the suit of the plaintiff was to the effect that the defendant be restrained from interfering in the peaceful ownership and possession of the plaintiff over the plot No.397

and in case it is found that the defendant was succeeded in changing the nature of the property by way of raising any construction, then the decree for mandatory injunction and for delivery of vacant possession of the suit property was prayed. The statement of learned counsel for the defendant was to the effect that the defendant shall not raise any construction over the plaintiff's property. His construction shall be limited to the area of his ownership in plot No.399 which is 14 *Karams* i.e. 77 feet from village *firni*. In view of aforesaid statement, plaintiff withdrew the suit and the defendant was held to be bound by the said statement.

[9]. The Trial Court has noticed that there was no change after the order dated 16.03.2012. In the nomenclature of plot No.397 i.e. in terms of any intended effort made by the defendant to encroach upon the plot No.397 or to raise construction thereupon after 16.03.2012. A categoric reply was filed by the plaintiff, that the then Samunder Singh and after his death his legal representatives have not encroached upon any portion of plot No.397, but they were not allowing the plaintiff to raise construction upon his own plot. The legal representatives of defendant have asserted their possession only to the extent as was in existence on 16.03.2012 and there was no change thereafter till date. The trial Court also noticed that concededly

there was no change in the existing status of suit property as on date after passing of order dated 16.03.2012, therefore, application for implementation of order dated 16.03.2012 does not arise as there was no violation of the same.

[10]. Having considered the issue, I am of the view that even if, the order dated 16.03.2012 is considered to be in consonance with Section 21 of the Legal Services Authority Act, 1987, still the same cannot be given effect in terms of implementation of the same as there was no change in the nomenclature of the suit land after 16.03.2012 meaning thereby the defendant has not violated his undertaking. Since the defendant has not constructed any part of plot No.397, nor has inteferred after 16.03.2012, his statement was qualified enough to say that he was owner of plot No.399 which starts from 14 *Karams* i.e. 77 feet from *firni* of the village and his construction shall be limited to the area owned by him. There is no violation done by the defendant in terms of his statement given in the Court which ultimately resulted in withdrawal of the suit of the plaintiff.

[11]. Under the garb of implementation of order dated 16.03.2012, nothing can be added in respect of prayer in the suit which was withdrawn on the basis of statement given by learned counsel for the defendant. If the petitioners have any

other grouse viz-a-viz. the portion marked as 'ABFE' as shown in the site plan, they would be at liberty to avail any other remedy in accordance with law.

[12]. Consequently, I am of the considered view that no error of jurisdiction has been committed in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

August 30, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No