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

CR No.8077 of 2014

Date of decision : 30.08.2017

Gopi Ram (since deceased) through his LRs

....Petitioner(s)

versus

Om Parkash and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Verma, Advocate
for the petitioner(s).

Mr. P.K. Ganga, Advocate
for respondents No.1 to 9.

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ANIL KSHETARPAL, J. (ORAL)

Judgment Debtor has filed this revision petition under Article 227 of the Constitution of India against the order dated 18.10.2014 dismissing his objections.

A decree for mandatory injunction directing removal of the construction and delivery of possession was passed by the Court on 08.05.2010. Rather than complying with the decree in execution petition, objection petition was filed. The objection petition was ordered to be dismissed by the learned Executing Court by recording following reasons:-

"I have heard learned counsel for the DH and JD. After hearing, this Court of the view that the Appellate Court passed the judgment and decree dated 2.6.2007. The Appellate Court has passed a decree for mandatory injunction directing the defendants to remove the construction over the portion of the plot in dispute and

to hand over the vacant possession to the plaintiff within a period of two months from the date of judgment. Accordingly, objections are not sustainable and is hereby dismissed. JDs are directed to hand over the vacant possession to the DH. The Halqua Kanuga along-with Patwari is directed to hand over the vacant possession to the DH along-with Police Help if any construction is found there on the suit property then official executing the decree will be authorised to remove the construction along with Police Help. SHO PS Nathusri Chopta is also directed to provide necessary Police Help at the time of execution of decree. Let compliance report be awaited.”

Learned counsel for the petitioners at the preliminary hearing submitted that the execution petition was filed beyond the period of three years and, therefore, the execution petition was barred by time. The decree passed by the First Appellate Court is dated 02.06.2007. The execution petition was admittedly filed on 08.05.2010 which is within a period of three years. Hence, argument of Ld. Counsel at the time of preliminary hearing was in correct.

Learned counsel for the petitioners has further argued that as per Section 60 (ccc) of the Code of Civil Procedure, the only house of the petitioner cannot be demolished. Section 60 deals with attachment and sale of the property in the execution of decree.

In the present case, the suit is for possession and mandatory injunction. Once there is a decree for possession, in my opinion, Section 60 of the CPC would not come into play.

Learned counsel for the petitioners has further argued that the decree passed was without jurisdiction. However, learned counsel for the

petitioners has not been able to point out as to how the decree passed by the First Appellate Court was without jurisdiction.

Learned counsel for the petitioners has further submitted that the decree is beyond the prayer made in the suit. The prayer made in the suit is extracted as under:-

“Suit for mandatory injunction directing the defendants to remove the constructions of kotha which they have unauthorised raised on the area measuring 3 karams x 9 karams on the southern side of the plot comprised in Sq.No.73 Killa No.14/1 (as shown in the map attached with this plaint) situated at Village Shahpuria Tehsil and Distt. Sirsa, of which the defendants have no such legal right to raise the same, and the plaintiffs being the owners of this land have every right to get this unauthorised construction of kotha removed, on the basis of evidence of every kind, oral and documentary and as a consequential relief of permanent injunction restraining the defendants from raising any construction on the suit land.”

It is clear from the reading of the decree that the decree for mandatory injunction was passed directing the defendant to remove the construction and hand over the vacant possession to the plaintiff. Therefore, there is no force in the submission of learned counsel for the petitioners.

In view of the above discussion, the revision petition is found to be without any merit. Hence dismissed.

(ANIL KSHETARPAL)
JUDGE

August 30, 2017
sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sahil Soni
2017.10.09 17:12
I attest to the accuracy and
integrity of this document