

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

**Civil Revision No.1424 of 2013 (O&M)
Date of Order:12.03.2018**

**The National Industrial Workers Co-op. House
Building Society Limited, Amritsar.**

..Petitioner

Versus

Amarjit Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Anil Chawla, Advocate,
for the petitioner.**

**Mr. Anupam Bhardwaj, Advocate,
for the respondent.**

ANIL KSHETARPAL, J(Oral)

Decree holder-petitioner is in revision petition against the order passed by the learned Executing Court dismissing the execution petition while allowing the objection petition filed by the respondent-Judgment Debtors. The court has held that the decree passed by the Court which has become final is not executable. Some facts would be required to be noticed.

Plaintiff, which is a Cooperative House Building Society of Industrial Workers filed a suit for mandatory injunction against the respondent-defendant-Amarjit Kaur, which was decreed vide judgment dated 30.10.1996.

The courts passed a decree for mandatory injunction directing the defendant to hand over the vacant possession of the land measuring 13'x64' which will be equivalent to 94 sq. yds. shown red in the site plan attached. No doubt, the decree was ex-parte as the defendant did not choose

to contest the suit.

Defendant-JD initially filed an application for setting aside an ex-parte decree which was dismissed. It is not in dispute that the decree passed between the parties became final and proceedings for setting aside ex-parte decree have finally concluded against the defendant-respondent-JD.

Decree holder-petitioner, thereafter wanted to execute the decree and take possession when the defendant-respondent-JD filed objections under Section 47 of the Code of Civil Procedure. It was pleaded in the application that decree was passed without due service on the defendant-respondent-JD and the decree sought to be executed is vague and not executable. The confusion was sought to be raised on the basis of certain khasra numbers.

Learned executing court framed issues which are extracted as under:-

“(I) Whether the decree dated 30.10.1996 is liable to be executed?ODH

(II) Whether the present execution application is barred by the principles of res-judicata?OJD

(III) Relief.”

After granting opportunity to the parties to lead evidence, the learned Executing Court held that the suit for mandatory injunction was not maintainable as under the garb of mandatory injunction, the relief of possession has been sought without payment of *ad valorem* court fee. The learned Executing Court has also considered the statement of AW1 Kulwant Singh Draftsman, wherein he has stated that he has got no personal

knowledge with regard to the aforesaid khasra numbers. Similar is the statement of AW2 Pramjit Singh, Surveyor.

Learned Executing Court after having recorded a finding that the witnesses produced by the decree holder do not support his version, accepted the objections and dismissed the execution petition.

I have heard learned counsel for the parties at length and with their able assistance gone through the paper book.

In the considered opinion of this Court, the learned Executing Court has totally went beyond the scope of enquiry required in the execution petition. Finality of the decree passed by the Court dated 30.10.1996 is not in dispute. Decree passed by the Court is with respect to a specific portion of the plot, demarcation whereof was given in the decree, duly identified by a lay out plan attached with the plaint. It is not in dispute that the property is situated in an urban area. Once the property was identified by lay out plan, which has to be read as part of a decree, then in the considered opinion of this Court, there should not be any difficulty in identifying the property to be executed upon.

Learned Executing Court committed a serious material irregularity in making observation that service on JD who was defendant in the suit is not proved. The decree passed by a Court, even if ex-parte, is a valid and binding decree till it is set aside. In the present case, application for setting aside was filed, which has been dismissed, therefore, the decree is final between the parties. The learned Executing Court had no jurisdiction to comment on the due service of the defendant or whether the relief of possession under the pretext of mandatory injunction has been sought or not. The learned Executing Court is to execute the decree unless it

comes to record a finding that such decree is either un-executable as such or it is result of fraud.

Learned Executing Court has further unnecessarily recorded a finding that since the witnesses produced by decree holder could not disclose the khasra numbers in which the land is situated, therefore, the decree is not executable. The decree is to be executed not on the basis of oral evidence produced at the time of execution but is to be executed on the basis of the decree passed by the Court.

In view of the discussion made hereinabove, the order under challenge is set side. The learned Executing Court is requested to proceed with the execution petition in accordance with law.

The revision petition is allowed.

March 12, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No