

210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1519-2014 (O&M)

Date of decision : 22.02.2018

Ashok Kumar and others

... Petitioner(s)

Versus

Harphool

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harish Bhardwaj, Advocate
for the petitioners.

Mr. Nagar Singh, Advocate for
Mr. A.S. Virk, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned order dated 28.01.2014 (Annexure P-2), whereby the execution application bearing No.12 of 2009 instituted on 24.01.2009 for violation of the judgment and decree dated 06.08.2008, vide which, the defendant was restraint from obstructing the plaintiffs from raising construction over the plot in the suit and from using the said plot for their use, has been dismissed.

Learned counsel for the petitioners submits that the petitioners--plaintiffs instituted the suit claiming injunction against the defendant, as indicated above, which was decreed vide order dated 06.08.2008 and the following relief was granted:-

"It is ordered that the suit of the plaintiffs has been decreed with no order as to costs and a decree for permanent

injunction in favour of the plaintiff is hereby passed restraining the defendants from obstructing the plaintiffs from raising construction over the plot in suit and from using the said plot for their use.”

He further submits that the respondent-defendant violated the aforementioned judgment and decree by preventing the plaintiffs from raising the construction, necessitating them to file a petition under Order 21 Order 32 of the Code of Civil Procedure. Even an FIR, in this regard, was also registered and MLR was prepared, wherein the injuries were shown to be attributed to the decree-holder, but the Court below dismissed the execution application by holding that the petitioners-decree holder has not been able to prove that the judgment-debtor or any other agent or servant had violated the judgment and decree. It was further submitted that another reason for dismissing the application was that the name of the judgment debtor was not mentioned in the FIR. During the course of the hearing, he has read out the cross-examination of Harphool, who candidly admitted that he had prevented the decree-holder from raising the construction and would further prevent, in case, he intends to raise the construction. The aforementioned piece of evidence has not been adverted to, thus, there is abdication, much less, illegality.

Learned counsel for the respondent-defendant submits that the petitioners-plaintiffs/decree holder have failed to prove the ingredients of Order 21 Rule 32 CPC, much less, violation of the aforementioned judgment and decree. The findings of the Court below are perfectly legal and justified as the same are based upon the appreciation of evidence, much less, do not call for interference.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that there is a force and merit in the submissions of Mr. Bhardwaj, for, Harphool, in the cross-examination, candidly admitted that he would definitely prevent the plaintiffs from raising the construction in future. The aforementioned piece of evidence on the going through the impugned order of the Executing Court is conspicuously wanting. In my view, once the issue in the application under Order 21 Rule 32 CPC was framed, it was incumbent upon the trial Court to advert to the each and every piece of evidence before arriving at a finding, thus, there is abdication, much less, illegality.

Keeping in view the aforementioned facts, the impugned order, under challenge is set aside and the matter is remitted to the trial/Executing Court to decide the execution application afresh after affording the opportunity of hearing to the parties in accordance with law as expeditiously as possible preferably within a period of four months from the date of the receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the Executing Court on 27.03.2018.

The present revision petition stands disposed of.

22.02.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**