

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CR-1537-2018 (O&M)

Date of Decision:08.03.2018

Mangat Ram

.....Petitioner

Versus

Madan Lal

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Vikas Bali, Advocate,
for the petitioner.**

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 04.12.2017 (Annexure P-10) passed by the learned Civil Judge (Jr. Divn.) Jalandhar, whereby an application filed by the petitioner in the execution proceedings raising an objection that the decree and execution have been obtained by fraud and forgery, was dismissed.

Briefly stated, the respondent-plaintiff has filed a suit for mandatory injunction directing the petitioner-defendant to remove the encroachment made by him and for restoring the goods of the plaintiff in shop bearing No.4051 measuring about 2½ marlas as shown in the site plan. A separate suit for permanent injunction has also been filed by respondent-plaintiff for restraining the petitioner from creating any third party interests or rights over the shop in question or changing its nature. Stay of further

alienation or transferring the property in any manner was also prayed for. The said suit was decreed by the trial court on 30.11.2013 with a direction to the petitioner-defendant to remove the encroachment and had also allowed the restoration of goods of the plaintiff in the shop. While the respondent-decree holder had filed for execution of the decree dated 30.11.2013 and the same was pending consideration before the executing court, petitioner-defendant moved the aforesaid application seeking dismissal of the execution application on the ground that the respondent-plaintiff had obtained the decree by committing fraud and forgery.

Learned counsel for the petitioner has argued that an agreement to sell dated 31.12.2009 was entered into between the parties for the shop in question for a total consideration of Rs.30 lacs and the respondent-plaintiff had paid earnest money for a sum of Rs.2 lacs by way of cheque, but it was never encashed. In this manner, no amount has been paid to the petitioner. The due date for execution of the sale-deed was 31.12.2012. The respondent-plaintiff claimed to be a tenant on the basis of rent note dated 31.12.2009. The respondent-plaintiff who was alleged to be a tenant in the shop has lodged an FIR No.16 dated 27.02.2010 against the petitioner and during trial in the criminal case, one of the witness, namely PW2 Parmod Sharma, has stated that he has never appeared as a witness in any case and deposed in favour of respondent Madan Lal. He has also stated that he has never appeared in favour of respondent Madan Lal in the court of Ms. Jasvir Kaur, the then Civil Judge (Jr. Divn.) Jalandhar including on 16.11.2010 and never tendered any affidavit in examination-in-chief. Therefore, the respondent is guilty of committing fraud and on this score alone the decree dated 30.11.2013 is liable to be set aside. The petitioner has also challenged

the decree dated 30.11.2013 being based on fraud as the same is pending adjudication before the civil court which is now fixed for 02.04.2018. He has further argued that since the respondent has committed fraud, the execution proceedings should be kept in abeyance.

I have heard the learned counsel for the petitioner.

The existence of decree dated 30.11.2013 is not in dispute. The only plea raised by learned counsel for the petitioner is that so long as the civil suit filed by the petitioner for setting aside the ex parte decree dated 30.11.2013 is pending consideration before the court, the proceedings in the execution should be stopped. This plea cannot be accepted as the executing court cannot go beyond decree which will otherwise lead to exceeding its jurisdiction. The executing court cannot travel beyond the decree. So long as the decree dated 30.11.2013 holds the ground, the same may be executed.

Accordingly, this Court does not find any merit in the present revision petition and the same is hereby dismissed.

For any other proceedings if pending or otherwise, the petitioner is at liberty to avail the remedies as available under law.

March 08, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No