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

CR-1598-2017 (O&M)

Date of decision : 19.02.2018

Raghbir

... Petitioner(s)

Versus

Balbir Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Ghangas, Advocate
for the petitioner.

Mr. S.R. Hooda. Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The petitioner-judgment debtor is aggrieved of the impugned order dated 10.11.2016, whereby an execution application moved under Order 21 Rule 32 of the Code of Civil Procedure for defiance of the judgment and decree dated 08.05.2002 in civil suit No.83 of 2002, has been allowed, by attachment of the property.

Learned counsel appearing on behalf of the petitioner submits that the respondents-plaintiff(s) instituted a suit for permanent injunction seeking restraint order against the petitioner-defendant from putting any hurdle or use of force of any kind from stopping the use of Path No.905 for going to his fields i.e. egress and ingress forcibly or illegally or in any other unwarranted manner. The aforementioned suit was decreed vide judgment and decree dated 08.05.2002. However, an application under Order 21 Rule

32 CPC was moved on 19.02.2013 by pleading that the petitioner-defendant violated the aforementioned judgment and decree as they obstructed the passage by erecting *Buggey* on the path.

It was contested by stating that there was no such violation or wilful defiance of the judgment and decree. The plaintiff(s)/decree holder failed to lead any documentary evidence except self-serving statement despite that the Court below has allowed the application by causing attachment. The aforementioned order, thus, is not sustainable in the eyes of law as the plaintiff(s) were required to discharged the onus to prove the violation. Except judgments and decrees dated 08.05.2002 and 14.05.2003 (Ex.P1 to Ex.P4), no other document had been placed on record like report of the Local Commissioner or photographs or statement of any neighbour.

Mr. S.R. Hooda, learned counsel appearing on behalf of the respondent No.1-plaintiff/decree holder submits that the evidence of the plaintiffs in the execution application has gone un-rebutted as despite extensive and serious cross-examination, nothing contrary surfaced, which would have resulted into dismissal of the execution application. The impugned order, under challenge is perfectly legal and justified. The petitioner-defendant/judgment debtor had violated the judgment and decree, thus, urges this Court for upholding the impugned order, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and merits in the submissions of Mr. Ghangas, for, the execution application except the statement of the plaintiff(s), no other evidence has been placed on record to establish the violation. The plaintiff(s) were required to place on record sufficient material like Local Commissioner's report and photographs or

testimony of neighbour to show the violation of the same. In the absence of the same, the Court below ought not to have passed the attachment order as has been done, thus, there is illegality and perversity. Resultantly, the impugned order dated 10.11.2016 is hereby set aside and the matter is remitted to the trial Court/Executing Court to decide the execution application afresh by affording the opportunities to the parties to prove the allegations and cross-allegations in accordance with law i.e. by any fresh evidence, if they intend to lead.

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

The present revision petition stands disposed of.

19.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No