

Civil Revision No.1840 of 2018

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

Civil Revision No.1840 of 2018
Date of decision: 19.03.2018

Prem

.....Petitioner

versus

Gian Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. S.S. Brar, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition under Article 227 of the Constitution of India prayer has been made for setting aside order dated 16.12.2017 of the Executing Court, whereby the suit property has been ordered to be attached, simultaneously issuing warrants of arrest of the petitioner.

In nutshell, in a suit filed by respondent No.1, namely Gian Kaur against the petitioner, she was declared owner in possession of the suit property after due contest from the petitioner. In her suit, the petitioner has taken a categorical stand that the suit property, upon which respondent No.1 has claimed her ownership and possession was distinct from plot numbers 7 to 9, comprising rectangle No.17 khasra No.15/1, purchased by him from its previous owner, therefore, respondent No.1 had no right title or interest over the same, which was negated by the trial Court.

First Appeal filed by the petitioner was dismissed, therefore,

Civil Court decree dated 25.11.2014 in favour of respondent No.1 attained

Civil Revision No.1840 of 2018

finality. Despite that, according to respondent No.1, on 30.03.2017 with the help of police and unsocial elements, petitioner forcibly tried to interfere into possession of respondent No.1 for which she also approached the police and moved application under Order 21 Rule 32 CPC before the Civil Court, which has been accepted by the Executing Court vide impugned order dated 16.12.2017 thereby ordering the attachment of the suit property and simultaneously issuing warrants of arrest of the petitioner.

Learned counsel for the petitioner *inter alia* contends that the Executing Court failed to appreciate that subject-matter of Civil Court judgment and decree dated 25.11.2014 in favour of respondent No.1 is altogether different from plot Nos.7 to 9 purchased by petitioner. For proper adjudication of the application of respondent No.1 under Order 21 Rule 32 CPC, it was required by the Executing Court to appoint some local commissioner for identification of the suit property.

Having given considerable thought to the submissions made by learned counsel for the petitioner, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

The stand taken by the petitioner in his reply is akin to which he had taken in his written statement to contest the suit filed by respondent No.1 titled as "Gian Kaur v. Prem Singh". Negating his plea, the trial Court decreed the suit in favour respondent No.1, which attained finality after dismissal of appeal of the petitioner by the First Appellate Court.

Relevant observations of the Executing Court are reproduced hereunder for ready reference: -

"4. The certified copy of judgment in suit entitled Gian Kaur vs Prem is on the file. Perusal of this judgment shows that there was dispute between applicant and respondent no.1

regarding property with in the red line of village Dariapur. As per this judgment applicant in the said suit claimed that suit property is in his ownership and possession whereas respondent no.1 contested the said suit on the ground that the suit property bears no.7, 8 and 9 and falls with in khasra no.17//15/1 which respondent no.1 purchased from its previous owners. The aforesaid facts in the judgment of suit entitled Gian Kaur vs Prem shows that the plea taken by the respondent no.1 in reply to this execution application is similar to his stand in the suit entitled Gian Kaur vs Prem. But the said stand of respondent no.1 claiming ownership and possession over the property regarding which decree was passed in suit entitled Gian Kaur vs Prem was rejected by the Court of Sh. Himanshu Arora, Ld. Civil Judge Junior Division, S.B.S. Nagar and even the findings of Sh. Himanshu Arora, learned Civil Judge Junior Division, S.B.S. Nagar were upheld by the court of Sh. Arun Gupta, learned Additional District Judge, S.B.S. Nagar in appeal filed by respondent no.1. The respondent no.1 has claimed that he has got demarcation of his property comprised in khasra no.17//15/1 conducted from the revenue department and after getting demarcation of khasra no.17//15/1 he has raised construction over his property and there is no link between the property for which he has got demarcation from the revenue department and the property regarding which decree in the suit entitled Gian Kaur vs. Prem was filed. Keeping in mind that contentions of respondent no.1 in suit entitled Gian Kaur vs Prem and the present application are similar it is clear that the property where the respondent no.1 is alleging that he was four-walled is none other than the property for which decree in suit entitled Gian Kaur vs Prem was passed, however, respondent no.1 cleverly got demarcation report from the revenue department to the effect that the said property is part of khasra no.17//15/1 and belongs to respondent no.1. It is here noteworthy that on the basis of demarcation report of the revenue department respondent no.1

Civil Revision No.1840 of 2018

cannot bypass the decree of the Civil Court confirmed in appeal to the effect that the sit property is in the ownership in possession of applicant and does not belong to respondent no.1. This demarcation report in the front of decree of the Civil Court holds no value in the eyes of law. Hence, it appears that respondent no.1 by procuring the demarcation report has tried to justify his action of interfering into the property of the applicant in violation of decree of the civil court passed in suit entitled Gian Kaur vs Prem on 25.11.2014. Therefore, it is clear that respondent no.1 has violated the decree of Civil Court in suit entitled Gian Kaur vs Prem, such as, it is hereby ordered that warrants of arrest of respondent no.1 be issued for 23.01.2018 so that he can be sent to Civil Imprisonment for disobedience of decree in suit entitled Gian Kaur vs Prem. Simultaneously, warrants of attachment of the property of respondent no.1 be also issued for the date fixed on filing of List of properties within five days.”

Learned counsel for the petitioner has not been able to point out any infirmity or perversity in the impugned order. A wrong-doer like petitioner is not entitled to any relief on the basis of mercy unless the wrong done by him is undone.

In view of discussion above, this petition fails and the same is hereby dismissed.

(Ramendra Jain)
Judge

March 19, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.