

210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 8.1.2018

CR No. 3347 of 2008 (O/M)

Kulwinder Kaur and others

..... Petitioners

Versus

Harnam Dass alias Nama and another

..... Respondents

CR No. 2238 of 2013 (O/M)

Kulwinder Kaur and others

..... Petitioners

Versus

Harnam Dass alias Nama and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Bansal, Advocate, for the petitioners in both cases.

Mr. D.K. Bhatti, Advocate, for respondents in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J. (ORAL)

Main cases

Heard.

By this single order, I will dispose of abovenoted two revisions i.e. CR No. 3347 of 2008 and CR No. 2238 of 2013. For brevity, facts have been taken from CR No. 2238 of 2013.

Impugned in the present revision is the order dated 6.3.2013 (Annexure-P-6), passed by the learned Civil Judge (Junior Division), Jalandhar, vide which in the execution proceedings, while invoking provisions of Section 152 of Code of Civil Procedure, 1908 (in short 'CPC'),

CR No. 3347 of 2008 (O/M) and CR-2238-2013 (O/M)

the Court ordered that error in the site plan and decree be corrected and Eastern side be read as Northern side, Western side be read as Southern side and Northern side be read as Western side.

The background of the case is that a suit for mandatory injunction filed by plaintiff-respondent Harnam Dass alias Nama was decreed by the learned Civil Judge (Junior Division), Jalandhar, vide judgment and decree dated 20.8.1998 (Annexure-P-2), whereby the mandatory injunction was granted to plaintiff, directing defendants to earmark the path of 2 karams in width and 21 karams in length from the western side of khasra No. 74 adjoining the land of Khema etc., connecting khasra No. 13/2/2, fully detailed in head note (A) of the plaint (Annexure-P-1). However, suit of plaintiff for permanent injunction mentioned in head note (B) of the plaint (Annexure-P-1) was dismissed. The appeal against the said decree was dismissed on 3.4.2003.

It comes out that the trouble arose during the execution proceedings, wherein on account of defect in the boundaries, mentioned in the site plan, attached with the plaint, the objections were filed. The objections of JD were dismissed by the learned Civil Judge (Junior Division), Jalandhar, vide order dated 30.4.2008 (Annexure-P-3). The JD-defendant came in revision before this Court. The revision was disposed of by a coordinate bench of this Court, vide order dated 8.1.2010 (Annexure-P-4), whereby this Court observed that in view of stand taken by learned counsel for respondents, the word 'Western' is a typographical error and can be corrected invoking Section 152 CPC. The path is to be provided by the executing Court strictly as per the decree. After the said order, present impugned order dated 6.3.2013 (Annexure-P-6) was passed

CR No. 3347 of 2008 (O/M) and CR-2238-2013 (O/M)

by the learned Civil Judge (Junior Division), Jalandhar. The decree has now become final. The perusal of impugned decree shows that in the decree, it is specifically ordered that 2x21 karams path is to be provided, adjoining the land of Khema etc. and Western side of khasra No. 74. Though, direction was mentioned as 'western side' but now while executing the decree, the Court has come to the conclusion that 'Eastern side', as per the revenue record is actually 'Northern side', 'Western side' as per revenue record is actually 'Southern side' and 'Northern side' as per revenue record is actually 'Western side'. The said error has been corrected. However, the relief that path is to be earmarked adjoining khasra No. 74, adjoining the land of Khema etc., remains intact.

The learned counsel for respondent relied upon the judgment of the Apex Court in *Prathibha Singh and another Versus Shanti Devi Prasad and another*, 2003 (1) RCR (Civil) 316, in which similar dispute regarding incorrect boundaries was discussed by the Apex Court and it was observed as under :-

“16. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of Civil Procedure Code is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the Civil Procedure Code depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting

the merits of the case, it may be corrected under Section 152 of the Civil Procedure Code by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accident slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the Civil Procedure Code.”

Therefore, I am of the view that since main relief remains intact, the error mentioned by the court could be corrected by the trial Court in exercise of powers under Section 152 CPC. The path is to be provided adjoining the land of Khema on side of khasra No. 74. Therefore, there is no illegality or infirmity in the impugned order. Therefore, instant civil revision is dismissed.

The learned counsel for petitioners has argued that the executing court could not go beyond the decree.

However, in this case, it is observed that the Court of learned Civil Judge (Junior Division), was acting in dual capacity. One as a Civil Judge and other as Executing Court. The order appears to have been passed in the capacity as successor court of Civil Judge.

In view of the matter the impugned order passed by the executing court, in consequence of order dated 8.1.2010, passed by a

CR No. 3347 of 2008 (O/M) and CR-2238-2013 (O/M)

coordinate bench of this Court in CR No. 3347 of 2008, is upheld. Instant revisions stand dismissed.

(KULDIP SINGH)
JUDGE

8.1.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No