

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

**C.R. No.3046 of 2012  
Date of Decision.16.02.2018**

Krishana Nand

.....Petitioner

Vs

Hans Raj Sharma

.....Respondent

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. RPS Ahluwalia, Advocate  
for the petitioner.

Mr. Brijinder Kaushik, Advocate  
for respondent Nos.2 to 4.

-.-

**AMIT RAWAL J.(ORAL)**

The revision petition is against the impugned order dated 10.02.2012 whereby the application filed under 21 Rule 32 CPC seeking execution of the judgment and decree dated 06.06.2002 wherein the defendants, their agents and representatives were restrained from interfering into peaceful possession of the plaintiff, has been dismissed.

Mr. RPS Ahluwalia, learned counsel appearing on behalf of the petitioner submits that since the petitioner-plaintiff had a threat with regard to alleged interference and dispossession over the suit land, the suit aforementioned was filed which after contest was decreed as per judgment and decree dated 06.06.2002. Since the respondents extended threats to raise construction on the land belonging to the petitioner, an application under Order 21 Rule 32 CPC was filed wherein the Court vide order dated 11.01.2012 issued warrants of possession and the bailiff was directed to take police help from the concerned SHO. However, the other party denied the alleged violation and disregard to the decree. Resultantly, the local

commissioner i.e. Kanungo, Tehsil Morni, District Panchkula was appointed who not only failed to demarcate the property as per the High Court Rules and Regulations but also did not take the photographs or reported with regard to alleged construction. The Court below has erroneously dismissed the execution application by relying upon the report dated 2.2.2012 (Annexure P-4), thus, there is abdication and misdirection.

Per contra, Mr. Kaushik, learned counsel appearing on behalf of the respondents submitted that there is no illegality and perversity in the order under challenge. The petitioner-decree holder has failed to prove the averments made in the application, therefore, onus was not discharged, thus, urges this Court for maintaining the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. The decree of the court below has to be regarded and respected. The report of the local commissioner dated 2.2.2012 (Annexure P-4) does not suffice the requirement of High Court Rules and Regulations, much less, is bereft of the extent of construction as alleged by the petitioner. The petitioner-decree holder should have been given an opportunity to get another demarcation report or examined other witnesses with regard to the alleged violation. Since with the passage of time, the technology has advanced, now it is possible to even have a demarcation through digital demarcation with the help of GPS.

I am of the view that the trial Court should not have dismissed the application in the manner and mode as indicated above. Resultantly, the order under challenge is set aside. The matter is remitted to the Executing Court, in essence, the application under Order 21 Rule 32 CPC is revived.

The Executing Court is directed to ascertain the alleged violation by giving

reasonable opportunities to the parties in accordance with law. Needless to state that the Executing Court shall undertake the task of digitized demarcation, if permissible.

The revision petition is allowed in above terms.

The parties shall appear through their counsel before the Executing Court on 07.03.2018.

**(AMIT RAWAL)**  
**JUDGE**

**February 16, 2018**

Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable                      No