

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 3615-2005 (O&M)

Date of decision: 25.04.2018

Mohan Singh and others

.....Petitioners

versus

Bishan Lal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Vivek Suri, Advocate for the petitioners
Mr.Viney Saini, Advocate for
Mr.G.S.Nagra, Advocate for respondent nos.7 to 31

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

Impugned in the present revision is the order dated 30.5.2005, passed by learned Additional Civil Judge (Senior Division), Samrala, vide which, objection petition dated 9.8.2003 filed by the legal representatives of Mansha Singh and legal representatives of Mohinder Singh raising objections to the execution of the decree dated 27.8.1998 passed by learned Additional Civil Judge (Senior Division), Samrala were dismissed.

It comes out that learned Additional Civil Judge (Senior Division), Samrala, vide judgment and decree dated 27.8.1998, while deciding the suit for possession regarding land measuring 46 kanals 0 marlas comprised in khewat no.30, khatoni no.36, 37, 33, rectangle no.17, killa no.8, 9, 13 and 14, rectangle no.17, killa no.2, 12/2, as per Jamabandi for the year 1989-90, situated within the revenue estate of Hassanpur, H.B. No.66, Tehsil Samrala, District Ludhiana, on the basis of the ownership, passed the following decree:-

It is ordered that suit of the plaintiff is decreed with costs for

possession to the extent to the plaintiff and defendant no.4 to 16 have right to possession of the suit property. However, the Custodian Department and the Tehsildar Sales would have every right to get their right of ownership decree because this decree is not binding on them as they are not part to the present suit.

Aggrieved by the said judgment, defendants went in appeal, which was dismissed by learned Additional District Judge, Ludhiana vide judgment 30.11.2000, holding that the judgment and decree under appeal are confirmed. It is the said decree, which is sought to be executed in the present case.

I have heard learned counsel for both the parties and have also carefully gone through the file.

Learned counsel for the petitioner has vehemently argued that the said judgment and decree of 27.8.1998 was passed on the basis of judgment of the year 1994, which was set aside in a suit filed by them. Learned counsel has pointed out that they had filed a civil suit No.295 of 1994, which was decided on 27.8.1998, in which, declaration was sought that they have become owners and proprietor of land measuring 30 kanals 14 marlas comprising in Khewat No.30, Khatauni No.37, rectangle no.17 killa no.8, 9, 13 and 14 having been adverse possession for the last 12 years. Their suit was dismissed by the trial Court, against which they preferred Civil Appeal No.97 of 28.10.1998, which was decided on 30.11.2000. There was a specific issue as to whether the judgment and decree dated 12.2.1994 is collusive, null and void qua the rights of the plaintiffs. It is stated that the said issue was determined in favour of the plaintiffs and a declaration was granted that the said decree is nullity. However, their prayer that they have become owners by way of adverse possession was declined.

It is contended that the judgment and decree in the present case is based on the said judgment and decree dated 12.2.1994, therefore, the said judgment and decree is not executable.

First of all, it is to be noted that land bearing rectangle no.17 killa no.2 and 12/2 was never subject matter of any previous litigation. In the judgment and decree passed in favour of the decree holders, a plea was also taken before the lower appellate Court that the judgment and decree of 12.2.1994 are nullity and it was so held in para no.15 of said judgment. However, even then the appeal was dismissed.

I am of the view that the Executing Court is to faithfully execute the decree. If for one or the other reason, JDs / present petitioners feel that the judgment and decree passed by learned Additional Civil Judge (Senior Division), Samrala dated 27.8.1998 and the judgment dated 30.11.2000 passed by learned Additional District Judge, Ludhiana are contrary to law or record, the same can only be set aside by the superior Court. The Executing Court is not competent to go behind the decree and look into the other documents and hold that the judgment and decree are inexecutable.

It being so, there is no force in the present revision petition. The same is accordingly dismissed.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

24.04.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No