

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

**CR-4471-2016 (O&M)
Date of decision : 2.5.2018**

**Balbir Singh (since deceased) through LRs
and another** **.....Petitioners.**

Versus

Pritam Singh and others **..... Respondents.**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Abhinav Singh Sood, Advocate for
Mr. Vikram Singh, Advocate for the petitioners.

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)

Respondent has not appeared despite service.

Impugned in the present revision petition is the order dated 3.10.2012 (Annexure P-5), passed by learned Additional Civil Judge (Senior Division) Dasuya, vide which an application filed under Section 114 read with Section 151 of the Code of Civil Procedure, 1908 for review and correction of the judgment and decree dated 20.1.2011 so as to correct the area of land from 19 kanal 4 sarsahi to 19 marlas 4 sarsahi was allowed. However, the correction regarding insertion of removal of the superstructure was declined.

Heard.

It comes out that plaintiff-Balbir Singh had filed a suit on 14.10.1999 for possession of land measuring 19 marlas 4 sarsahi after removal of the superstructure. The said suit was decreed on 20.1.2011 vide

judgment and decree passed by learned Additional Civil Judge (Senior Division), Dasuya. In the said suit, the Court recorded the findings on issue No. 1 that defendants has illegally encroached from 19 marlas 4 sarsahi of land belonging to the plaintiff and has raised construction thereupon. This fact was established from the report of the Local Commissioner. Issue No. 1 was, accordingly, partly decreed in favour of the plaintiff. However, while granting the relief, a simple injunction decree for possession of land measuring 16 marlas was granted and the relief clause was silent regarding the removal of the superstructure which is required to be removed when the possession is delivered. Appeal against the said judgment and decree was filed but withdrawn on 23.5.2016 with the permission to file the revision petition against the impugned order dated 3.10.2012.

I am of the view that judgment and decree passed by the learned trial Court shows that the Court found that defendants have encroached upon the 16 marlas land belonging to the plaintiff and raised superstructure thereupon. Local Commissioner was sent to the spot who has given the report and on the basis of the report, plaintiff was held entitled to possession of 16 marlas of land out of the said land. The suit was partly decreed.

I am of the view that once it was found by learned trial Court that there is superstructure on the land, the necessary followup is that while delivering the possession, said superstructure is liable to be removed. The said omission in the relief clause and consequently in the decree is a clerical

error and can be corrected under Section 151 read with Section 152 of the Code of Civil Procedure, 1908.

Accordingly, present revision petition is allowed and the impugned order dated 3.10.2012 (Annexure P-5), passed by learned Additional Civil Judge (Senior Division), Dasuya is set aside and the judgment and decree passed by learned trial Court stands amended to the effect that the superstructure on the land measuring 16 marlas is also ordered to be removed while delivering the possession.

Accordingly, revision petition is allowed.

Since the main petition is allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

2.5.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No