

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

CR No. 4822 of 2018
Date of Decision: 19.09.2018

Gram Panchayat Nalhoti through its Sarpanch

.....Petitioner

Versus

Raj Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Madan Lal Saini, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 22.12.2017, passed by the Civil Judge (Junior Division), Sri Anandpur Sahib (for short, the Executing Court), through which on an application filed by respondent No.1 under Order 21 Rule 32 read with Section 151 CPC, the petitioner along with respondent Nos.2 to 5 have been directed to hand over vacant possession of a part of the suit land to respondent No.1 within forty days from the date of the order.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein permanent injunction to restrain the petitioner, who was defendant in the suit, from interfering in her peaceful possession of the property detailed and described in the plaint (for short, the suit property). It was further prayed that the petitioner/defendant be restrained from raising any kind of construction, superstructure and creating any water logging in the suit property.

Upon notice, the petitioner did not appear before the Trial Court and was proceeded against ex-parte. On the basis of ex-parte evidence led by respondent No.1, her suit was decreed. In spite of the decree in her favour, the petitioner sought to carve out a drain on a part of the suit property. Against such action on the part of the petitioner, respondent No.1 filed an application before the Executing Court which was allowed, occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

The operative part of the decree passed in favour of respondent No.1, which admittedly has attained finality, reads as under:-

“This suit is coming on this 21st day of October 2008 for final disposal before me (Kapil Aggarwal, PCS; Civil Judge, Junior Division, Anandpur Sahib) in the presence of Sh. Sucha Singh, Advocate counsel for the plaintiff and defendant ex-parte. It is ordered that the suit of the plaintiff decree ex-parte for the restraining defendant from interfering in any way or in any manner in the peaceful possession of the plaintiff as owner and co-owners and raising any kind of construction, super structure and from creating any kind of water logging in the suit land except according to due process of law. Keeping in view the peculiar circumstances of the case parties are left to bear their own costs.”

(emphasis supplied)

Thus, the petitioner/defendant was restrained from interfering in any way or in any manner in the peaceful possession of respondent No.1 over the suit property. The petitioner was further restrained from constructing, super-structuring or creating any kind of water logging in the suit property except in accordance with the law.

Through leading of cogent evidence before the Executing Court, respondent No.1 proved that the petitioner had encroached upon a part of the suit property by carving a drain there upon. This was done by the petitioner in spite of having knowledge of the afore-referred decree in favour of respondent No.1. To rebut the case set up by respondent No.1, the petitioner solely relies upon a demarcation report dated 09.11.2010 to show that the drain was not being constructed on the suit property. Such report is found to be rightly discarded by the Executing Court as its author was not produced before the Executing Court to prove the same. Even otherwise, a perusal of the report, a copy of which has been placed on the record of this Court as Annexure P-8, shows that there is nothing therein to show that before conducting the demarcation, any notice was served upon respondent No.1 that demarcation of respondent No.1's property would be conducted on the day when the demarcation was allegedly done.

In view of the above, no error is found in the order impugned in the present proceedings.

Dismissed.

(DEEPAK SIBAL)
JUDGE

19.09.2018
sandeep

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No