

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

C.R.No.5231 of 2017

Champa Rani

....Petitioner

Versus

Sandeep Kumar and Anr.

....Respondents

Date of Order: 01.06.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Namit Khurana, Advocate for the petitioner.

Mr. Mohit Malik, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned order dated 21.7.2017 passed by learned Civil Judge (Jr. Division), Yamuna Nagar whereby application filed by the decree holder in execution application under Order XXI Rule 32 CPC has been allowed.

It is stated that the trial Court vide judgment and decree dated 02.9.2014 decreed the suit of the respondent-plaintiff in the following manner:

“In view of the above said discussion, I am of the considered view that plaintiff has succeeded to prove his case. Hence, suit of the plaintiff is decreed and defendant is restrained from interfering into the possession and ownership over the suit property Marked as ABCD in the site plan Ex.P2. Decree Sheet be prepared accordingly and file be consigned to the record room after due compliance.”

Thereafter, the respondent/decreed holder filed an application for placing on record statement of CW-1 Parvesh Kaushik, Building Inspector, MC, Yamuna Nagar, who appeared as witness in FIR No.484 dated

12.10.2011 by way of additional evidence, when the case was fixed for arguments. Said application has been allowed by the trial Court vide the impugned order.

Learned counsel for the petitioner/judgment-debtor submitted that the said application has erroneously been allowed, for, additional evidence was neither relevant nor required, rather an attempt has been made to re-open the issue, which would amount to *de novo* trial. If at all the respondent-plaintiff were aggrieved, could have preferred the appeal against the impugned judgment and decree passed by the trial Court.

Per contra, learned counsel for the respondent-decree holder submitted that the said evidence is necessary and essential, for, it would help the Court for proper adjudication of the lis, thus prayed for dismissal of the present petition.

After hearing learned counsel for the parties and appraising the paper book, I find force and merit in the submissions of learned counsel for the petitioner, for, the injunction as noticed above was only with regard to forcible interference and dispossession. Statement of the Building Inspector recorded in FIR No.484 dated 12.10.2011, in my view, would not be relevant and material qua the alleged breach of the injunction, for, it pertained to sanctioning of the site plan in respect of the building.

The trial Court has not applied its mind while allowing the application leading into passing of the impugned order, which suffers from illegality and is not sustainable being unjustifiable. Resultantly, the present petition is allowed and the impugned order dated 21.7.2017 is set aside.

June 01, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No