

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

CR No.5999 of 2017 (O&M)

Date of Decision:01.03.2018

Sajjan Singh through his LR

.....Petitioner

Vs.

Rati Ram through his LR and others.

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Jagjeet Beniwal, Advocate for the petitioner.

RAMENDRA JAIN, J. (Oral)

Through this revision under Article 227 of the Constitution of India, challenge has been laid to the judgment dated 17.03.2017 (Annexure P.3) of the First Appellate Court remanding the case to the Executing Court, reversing the judgment of the Executing Court dated 10.02.2015.

In nutshell, a suit bearing No.2231 of 21.11.1998 for permanent injunction instituted by Rati Ram father of contesting respondent No.1 against the petitioner and respondents No.2 to 6 (proforma respondents) titled as “Rati Ram v. Sajjan Singh” was decreed in his favour on 22.07.2004, thereby perpetually restraining the petitioner and proforma respondents from interfering into the cultivating possession of Rati Ram.

After his death, his legal heirs including contesting respondent No.1 succeeded to his estate, who filed a petition under Order 21 Rule 32 read with Section 151 CPC against the petitioner and proforma respondents

for restoration of their possession over the suit land measuring 5 kanals detailed in the judgment of the Executing Court situated at Village Dubaldhan, Bidhyan, Tehsil Beri, District Jhajjar and for taking appropriate action against them for intentional, wilful breach and disobedience of the judgment and decree dated 22.07.2004, by attachment of their property or their detention in civil imprisonment or both, pleading that despite judgment and decree aforesaid, permanently restraining the petitioner and proforma respondents from interfering into the suit property, they intentionally and wilfully violating the same, interfered into peaceful cultivating possession of contesting respondent No.1 and other legal heirs of Rati Ram and installed boundary fence around the suit property in utter disregard and flagrant violation of the aforesaid judgment and decree.

The Executing Court after holding trial, dismissed the application of contesting respondent No.1 under Order 21 Rule 32 CPC observing that there was nothing on record to suggest that was any intentional and wilful disobedience of the order by the petitioner and proforma respondents and, therefore, no question had arisen to punish them under Order 21 Rule 32 CPC or for restoration of possession of the contesting respondent No.1 and other legal heirs of Rati Ram vide impugned order dated 10.02.2015 (Annexure P.1).

Being aggrieved, the contesting respondent No.1 and other legal heirs of Rati Ram – decree holder approached the First Appellate Court, who setting aside the aforesaid order of the Executing Court remanded the case to the Executing Court with the direction to restore possession of the suit property to the decree holder as per law vide judgment

dated 17.03.2017.

Learned counsel for the petitioner- judgment debtor inter-alia contends that according to respondent No.1 though not admitted, the petitioner had illegally encroached upon the suit property in the month of July, 2012, i.e. after approximately eight years of passing of the judgment and decree in his favour in the year 2004. Contesting respondent No.1- decree holder even could not identify the suit property while appearing as his own witness as PW1 and, therefore, no alleged violation or wilful disobedience by the petitioner and proforma respondents of the judgment and decree dated 22.07.2004 was proved on record. The learned trial Court had rightly dismissed the petition of contesting respondent No.1 under Order 21 Rule 32 CPC, because the contesting respondent No.1 and other legal heirs of Rati Ram did not lead any cogent and convincing evidence about violation of Civil Court judgment and decree aforesaid or that they ever illegally encroached upon the suit land.

Having given considerable thought to the submissions made by learned counsel for the petitioner, I find the instant revision completely devoid of any merit for the reasons to follow:-

It is not disputed that vide judgment and decree dated 22.07.2004 in a civil suit filed by Rati Ram, father of contesting respondent No.1, the petitioner and proforma respondents were permanently and perpetually restrained, entering into the suit land or dispossessing Rati Ram from it. The said judgment and decree attained finality.

According to the contesting respondent No.1 and other legal heirs of Rati Ram, the petitioner and proforma respondents illegally

occupied the suit land in July, 2012 and raised fencing in it. Contrary to it, the petitioner and proforma respondents took the stand that neither they did so nor they ever violated the judgment and decree aforesaid.

Since as per own stand of the petitioner and proforma respondents, when they have not violated judgment and decree in favour of the contesting respondent No.1 and other legal heirs of Rati Ram, in that eventuality, they should not have any fear, in case, the Executing Court is restoring the possession of the suit land to the contesting respondent No.1 and other legal heirs of Rati Ram, pursuant to the judgment and decree dated 22.07.2004. In other words, the petitioner and proforma respondents may not have any objection in case possession of the suit land over the suit land is restored to respondent No.1.

The judgment of the Executing Court has rightly held to be patently illegal by the First Appellate Court being based on misreading of the statement of contesting respondent No.1 as PW1 more particularly in view of the fact that statement of a witness is to be read as a whole and not in isolation.

The Executing Court, adopting pick and choose policy, while reading the statement of contesting respondent No.1 has wrongly and illegally observed that he could not identify the suit property which is contrary to the factual position inasmuch as the identity of the suit property is well established on the record, it being having specific khasra and khewat numbers, i.e. Khewat No.137, Rectangle No.7 and Killa No.20 min (4-0), 21 min (1-0).

I have gone through the impugned judgment of the First

Appellate Court and find no illegality or perversity in the same.

In view of the discussion made above, the revision petition is dismissed.

March 01, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No