

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

CR-6120-2018 (O&M)

Date of Decision:13.09.2018

Jai Bhagwan Lambardar

.....Petitioner

Vs.

Raghubir Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Atul Yadav, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioner challenges the order of the learned Civil Judge (Senior Division), Gurugram (execution Court), dated 27.08.2018 (Annexure P-7) by which the objections filed by the petitioner under Order 21 Rules 101 and 97 of the CPC, has been dismissed. He contended that he is the *Lambardar/Nambardar* of the village and though he was not a party to the original *lis* and in fact did not claim possession of the suit property even vide the objections filed, however, he sought that the school that was running on the suit property, be not disturbed.

Though the decree sheet issued by the trial Court has not been annexed with the petition, the relief clause in the judgment of that court, dated 07.01.2018, has been annexed Annexure P-1, which reads as follows:

“30. As a sequel of above mentioned observations on the above issues, the suit of the plaintiffs deserves to be decreed. Hence, the same is hereby decreed with cost.

The defendants are perpetually restrained from raising

construction over any portion of the suit land in any manner whatsoever. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

Announced.”

Thereafter, the said judgment and decree having been challenged by the defendant State and its officers, even the second appeal was dismissed vide an order of this Court dated April 15, 2009, (a copy of which is annexed as Annexure P-2), passed in RSA no.1490 of 2009, which reads as follows:

“....., both the Courts below concurrently held the plaintiffs in possession of the suit land measuring 4 kanals only, except the land underneath the school building, admittedly in possession of the defendants and rightly restrained the defendants from raising any sort of construction thereupon. There are concurrent findings of fact recorded by both the Courts below. The findings are based on cogent evidence, oral as well as documentary, and it cannot be concluded that the findings are laconic or they lack the support of evidence. Accordingly, the appeal is dismissed in limine.”

That being so and admittedly the petitioner not being in possession of the suit land, I find no error in the impugned order, with, in any case, the decree in favour of the respondents-plaintiffs not being *qua* the constructed portion on the suit land, which construction has been exempted from the operation of the judgment and decree passed by the Civil Court

(upheld upto this Court).

Consequently, this petition is dismissed, simply with the observation that as regards the constructed portion which does not form part of the decree in favour of the respondents-plaintiffs, naturally no action shall be taken by the execution Court for disturbing the existence of the said building, which otherwise, as per the petitioner, is stated to be running as a school.

(AMOL RATTAN SINGH)
JUDGE

September 13, 2018.

dharamvir/dinesh

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO