

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

**CR No.7422 of 2015(O&M)
Date of Decision: 27.08.2018**

Gurdeep Singh and others

..... Petitioners

Versus

Gurnam Singh

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioners.

Mr. Ravi Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioners against the order dated 11.03.2014 passed by Civil Judge (Junior Division), Rupnagar and judgment and decree dated 20.08.2015 passed by Additional District Judge, Rupnagar whereby prayer in terms of Order 21 Rule 32 CPC was allowed by the trial Court and the same was upheld by the Lower Appellate Court.

[2]. At the very outset, learned counsel for the petitioners submitted that filing of appeal before the Additional District

Judge, Rupnagar i.e. Civil Appeal No.39 dated 21.04.2014 against the order dated 11.03.2014 passed by Civil Judge (Junior Division), Rupnagar was ill advised and the same was not maintainable. This revision petition be treated against the order dated 11.03.2014 passed by Civil Judge (Junior Division), Rupnagar vide which application under Order 21 Rule 32 CPC was allowed.

[3]. The factum of *bona fide* in filing the appeal before the Additional District Judge, Rupnagar has been pleaded in para No.3 (iv) of the grounds of revision petition before this Court. The violation of decree for permanent injunction has been alleged on the ground that the petitioners have disobeyed the decree and have raised the construction in violation thereof.

[4]. A decree for permanent injunction was passed by the trial Court on 02.12.1995/05.12.1995. The said decree was upheld by the Lower Appellate Court on 21.02.2002. Judgment debtors were restrained from interfering in the possession of the decree holder from the disputed land fully described as ABCD and EFGH in the site plan as well as Schedule A and B of the plaint and also from the property described as LMYDEHIJK including the land measuring 2 kanals 7 marlas being ½ share in the land comprised in khasra No.2//12(1-11), 29(0-18), 30(0-13) and 32(1-11) fully described through Schedule C.

[5]. Initially, an application for contempt of Court for disobedience of the orders dated 14.03.1991 and 25.07.1991 was filed by the decree holder/respondent under Order 39 Rule 2-A CPC before the trial Court. It was alleged in the application that the judgment debtors/petitioners had willfully disobeyed the Court order dated 20.04.1992 on 06.12.1993 by fixing shutter in the property and had violated the orders dated 14.03.1991 and 25.07.1991 passed by the trial Court.

[6]. The allegations were denied by the judgment debtors/petitioners. They have pleaded that there was no violation committed by the judgment debtors.

[7]. The said application was dismissed by Civil Judge (Senior Division), Rupnagar vide order dated 20.05.1998. Trial Court after framing of issues and leading of evidence ultimately held that the allegations of disobedience and violation of orders dated 14.03.1991 and 25.07.1991 were false. The decree holder could not establish the allegations that the judgment debtors had raised the construction in the disputed property in any manner. The said order dated 20.05.1998 became final.

[8]. Trial Court decreed the suit vide judgment and decree dated 02.12.1995/05.12.1995 and the judgment debtors remained unsuccessful before the Lower Appellate Court when the appeal was dismissed vide judgment and decree dated

21.02.2002.

[9]. The violation of the decree dated 02.12.1995/05.12.1995 passed by the trial Court was alleged in the petition/application under Order 21 Rule 32 CPC. The decree holder alleged that after passing of the decree for permanent injunction by the trial Court, judgment debtors/petitioners have encroached upon the property and have raised the construction over the same.

[10]. After reproducing operative part of the judgment in para No.2 of the petition/application, decree holder proceeded to plead para Nos.3, 4 and 5 in the following manner:-

“3.That after passing of the decree for permanent injunction, the defendant/J.Ds have encroached upon the property which was subject matter of the suit and have raised construction over the same which are liable to be removed.

4. That under such circumstances, defendants/J.Ds may be directed to obey the decree and to remove the constructions which have been raised during the pendency of suit and appeal. In case the defendants/J.Ds does not obey the decree, then the same may be implemented through the process of the Court in accordance with law.

5. That further more, a Local Commissioner may be appointed for which a separate application is being

construction have been raised by defendants/J.Ds over the property which was subject matter of suit.”

[11]. Ultimately, prayer was made that the judgment debtors be directed to obey the decree and to remove the construction which they have raised on the land in question and in case, they do not obey the decree, the order be implemented through process of the Court. In the reply filed by the judgment debtors, they have denied the allegations.

[12]. Civil Judge (Junior Division), Rupnagar vide order dated 11.03.2014 accepted the application under Order 21 Rule 32 CPC with costs and issued warrant of possession after removing the superstructure/construction raised by the judgment debtors in portion ABCD and EFGH in favour of the decree holder on deposit of warrant charges.

[13]. Trial Court has recorded a finding that the judgment debtors have raised construction on the suit property during pendency of the suit. Reference was made to the cross examination, wherein it was admitted that the said construction was raised around 20/22 years back and it was observed that the said construction had happened at the same point of time when the civil suit was pending. Non-examination of the Local Commissioner was not considered fatal to the case while relying upon the report of Local Commissioner dated 09.04.2011.

[14]. The application under Order 21 Rule 32 CPC as noticed above is conspicuously silent with regard to time, place and manner of alleged violation. As per findings recorded by the trial Court, the alleged violation took place about 20/22 years back. The particulars of violation have not come forth. In the application under Order 39 Rule 2-A CPC, the trial Court did not infer, rather dismiss the same vide order dated 20.05.1998. The application under Order 21 Rule 32 CPC was filed on 20.08.2002. The findings of raising construction around 20/22 years back cannot be co-related to the period. At the time of dismissal of the application under Order 39 Rule 2-A CPC on 20.05.1998, there was no violation found by Civil Judge (Senior Division), Rupnagar. The period of alleged violation could have been proved by the decree holder from 20.05.1998 onwards till passing of the decree, but the finding recorded by the trial Court was to the contrary thereby alleging that the alleged construction was raised around 20/22 years back.

[15]. For convicting a person while executing the decree under Order 21 Rule 32 CPC, the violation has to be specific in terms of time, place and manner of violation. Since the application is conspicuously silent with regard to aforesaid material particulars, therefore, I deem it appropriate to accept this revision petition. Impugned order dated 11.03.2014 passed

by Civil Judge (Junior division), Rupnagar is hereby set aside. Consequent order dated 20.08.2015 passed by Additional District Judge, Rupnagar is also set aside, though appeal against the order dated 11.03.2014 passed by Civil Judge (Junior division), Rupnagar was not competent. Consequently, this revision petition is allowed.

August 27, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No