

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7095 of 2017(O&M)
Date of Decision: 27.02.2018

Moonlight

... Petitioner

Versus

Har Narain (since deceased) through
his LRs. & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kartar Singh Malik-1, Advocate,
for the petitioner.

RAMENDRA JAIN, J.(Oral)

Through this revision petition under Article 227 of the Constitution of India, challenge has been laid to the order dated 07.03.2017 of the Executing Court dismissing the objections of the petitioner.

In nutshell, the suit of respondent No.1-decree holder for partition of the suit property was decreed against the petitioner by the trial Court vide judgment and decree dated 10.03.2005. Accordingly, a preliminary decree was passed, which culminated into final decree dated 08.01.2015.

In execution filed by respondent No.1-decree holder, the petitioner filed objections, which have been dismissed by the Executing Court.

Learned counsel for the petitioner contends that in suit respondent No.1-decree holder pleaded that the suit property was a vacant plot against the factual condition, because it consisted construction. Therefore, the impugned judgment and decree dated 08.01.2015 cannot be executed. In support of his arguments, learned counsel has relied upon the decision of this Court in Ram Chand and anr. Vs. Mallu and others, 1977 PLJ

352.

Having given thoughtful consideration to the submission made by learned counsel for the petitioner, this Court is of the opinion that the instant revision petition is totally frivolous, an abuse of process of law and is the result of ill advice, inasmuch as respondent No.1-decree holder in his plaint had made specific prayer for demolition of the construction raised by defendant No.1, who is none else but grand-father of the petitioner. The suit of respondent No.1-decree holder was decreed in toto.

During trial, Balbir Singh father of the petitioner as DW-1 categorically testified that the suit property was a house. Therefore, it does not lie in mouth of the petitioner that the suit property claimed by respondent No.1-decree holder was a vacant plot.

The petitioner before the trial Court has not taken the aforesaid plea, rather took the stand that the suit property had already been partitioned, therefore, there was no necessity to execute the decree, which the trial Court after hearing both the sides has rejected.

In view of discussion made above, finding no substance in the instant revision petition, the same is dismissed, subject to payment of exemplary costs of Rs.10,000/-, to be deposited with the Member Secretary, District Legal Services Authority, Rohtak.

A copy of this order be sent to the Member Secretary, District Legal Services Authority, Rohtak, to recover the costs.

27.02.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No