

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

CR No.7481 of 2018

Date of Decision:02.11.2018

Gurdial Singh and another

.....Petitioner

Vs.

Anil Kumar and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.K.K.Garg, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (Oral)

By this petition, petitioners seek quashing of the impugned orders dated 06.10.2018 and 25.10.2018 (Annexure P5 and P7 respectively), passed by the learned executing Court.

2. Learned counsel for the petitioners has produced in Court today (as directed vide yesterdays' order), a copy of the decree passed by the learned Ist appellate Court dated 12.2.2014, accepting the appeal of the respondent no.1/plaintiff, thereby decreeing his suit and restraining the petitioners as also the proforma respondents herein (co-defendants with the petitioners), from interfering in the possession of the suit land in which the plaintiff was a co-sharer.

A perusal of that judgment shows that after discussing the evidence led by the defendants themselves, it was found that DW1 and DW2 had both admitted that when the transmission tower was erected, no demarcation of the land had been conducted and that the plaintiff had even at that time objected to the tower being erected on a part of his land (to the extent of 1 ½ *marlas* thereof).

It is also seen that the learned Ist appellate Court found that a local commissioner had been appointed for demarcation, who had, vide his report, found that the tower was installed over 7 ½ *marlas* of land and thereby defendants had encroached upon the disputed land.

Admittedly, that judgment and decree has become final with even the second appeal filed before this Court stated to have been dismissed.

3. Upon execution proceedings having been initiated by the plaintiff-decree holder, the present petitioners filed their objections, during the course of which they also sought that demarcation of the disputed land be got conducted again by a competent revenue officer.

That application has been rejected vide the impugned order dated 06.10.2018, on the ground that the execution Court can not go beyond the decree by ordering a fresh demarcation.

4. An application seeking recalling of that order has also dismissed on 25.10.2018 (a copy of which is Annexure P-7), again reiterating that the report of the local commissioner, i.e of the *Halqa Patwari*, dated 01.04.2010, was already on the case file, on the basis of which the suit of the plaintiff had been decreed, and therefore the executing Court cannot go beyond that decree.

Hence, warrants have also been ordered to be issued, for possession of the suit land to be given to the decree holder.

5. Learned counsel for the petitioners submits that the demarcation was entirely incorrect, it not showing the streets in the site plan that accompanied the report of the local commissioner (the site plan stated to be Annexure P-1 with the present petition), whereas actually the position

on the ground is, as per the petitioners, as depicted in the coloured site plan Annexure P-4, with the petition.

Thus, a second demarcation is sought to be conducted in the execution proceedings.

6. Having considered the arguments of learned counsel as also having perused infact the decree passed by the learned appellate Court in favour of the respondent no.1/plaintiff, I see absolutely no ground to interfere with the impugned orders passed by the learned execution Court, in view of the fact that the question whether or not the demarcation conducted during the course of the trial was a proper one or not, stands closed with the decree having become final upon dismissal of the 'regular second appeal' filed by the petitioners.

Hence, the execution Court is absolutely correct in holding that doubting the said report and ordering a fresh demarcation would actually be going beyond the decree issued.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

(AMOL RATTAN SINGH)
JUDGE

November 02, 2018.
dharamvir/dinesh

Whether speaking/reasoned	: YES
Whether Reportable	: YES