

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

Sr. No.109

C.R. No.7767 of 2018

Date of decision: 16.11.2018

Raj Kumar and others

....Petitioners

versus

Ram Pal (since deceased) through his legal representatives and another
....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. G.C. Shahpuri, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 06.09.2017 passed by the Civil Judge (Senior Division), Yamuna Nagar at Jagadhri – (for short – the Executing Court) through which an application filed by the respondents/decreed holders under Order 21 Rule 32 CPC has been allowed and the objections filed by the petitioners/judgment debtors have been dismissed. Challenge is also made to the order dated 26.10.2018 passed by the Additional District Judge, Yamuna Nagar (for short – the Appellate Court) through which appeal filed by the petitioners against the aforesaid order of the Executing Court has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2006, the respondents instituted a suit seeking therein permanent injunction to restrain the petitioners, who were the defendants in the suit, from encroaching upon

any part of a bara measuring 5 marlas comprised in Khewat No.297, Khatauni No.431, Khasra No.145, situated at village Bhogpur as detailed and described in the head note of the plaint (for short – the suit property). The respondents further sought to restrain the petitioners/defendants from raising any sort of construction on the suit property. On being put to notice, the petitioners appeared before the Trial Court and contested the suit. After sifting the evidence which had come on record, the Trial court decreed the respondents' suit and consequently restrained the petitioners from encroaching upon the suit property. Since the petitioners did not challenge the aforesaid decree, the same attained finality.

On the ground that in violation of the afore-referred decree, the petitioners were encroaching upon the suit property, the respondents approached the Executing Court through an application filed by them under Order 21 Rule 32 CPC read with Section 151 CPC. On being put to notice, the petitioners appeared before the Executing Court and filed their objections. Through the order impugned in the present proceedings, the respondents' application has been allowed whereas the petitioners' objections have been dismissed. The appeal filed by the petitioners against the dismissal of their objections met the same fate as their objections. Such order is also under challenge in the present proceedings.

Learned counsel for the petitioners submitted that there was no encroachment by the petitioners upon the respondents' land; the Executing Court should have framed issues and after giving opportunity to the parties to lead evidence adjudicated upon the same and that the Executing Court could and should have not relied upon the report of the Local Commissioner as its author had not been produced before the Court.

The afore submissions made by learned counsel for the petitioners have been considered but no merit in the same is found.

The objections filed by the petitioners were that they had not encroached upon the respondents/plaintiffs' land. On such dispute, the Executing Court appointed a Revenue Officer as a Local Commissioner who submitted a report as per which the petitioners were found to have encroached upon 3 marlas of the respondents' land. The objections filed by the petitioners to the report of the Local Commissioner appointed by the Executing Court carry no weight as the petitioners have failed to point out any factual error therein. Such report is per se admissible. The demarcation was done by the Local Commissioner in the presence of the petitioners. The petitioners also did not produce any independent demarcation report by any authority in support of their stand. No malafides have even been alleged by the petitioners against the Local Commissioner who was an official of the revenue department. A similar demarcation report had also been exhibited during the course of the trial which was duly proved and on the basis whereof the trial court had returned specific findings against the petitioners to the effect that they were raising construction with an attempt to encroach upon the suit property. The petitioners had accepted such findings as no challenge was made by them to the same.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 16, 2018

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No