

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

**CR No.8084 of 2017 (O&M)
Date of decision : March 23, 2018**

Shiromani Gurdwara Parbandhak Committee Petitioner

Versus

Ex. Military Mazhabi Sikh Association and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. B.S. Sudan and Ms. Puneet Kaur Sekhon,
Mr. Rohan Jain and Mr. Harbani Singh, Advocates
for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for respondent Nos.1 to 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Heard.

Impugned in the present revision is the order dated 25.09.2017 (Annexure P-1) passed by learned Civil Judge (Sr. Divn.), Amritsar, being Executing Court, vide which the objections filed by the J.D.-petitioner were dismissed.

It comes out that the decree-holder/plaintiff had filed a suit for possession of Bunga Mazhabian situated adjacent to the Parkarma Sri Darbar Sahib, Amritsar, by mentioning the boundaries as shown in the site plan attached with the plaint. The suit was ultimately decreed on 28.08.1978 and decree for possession of the said Bunga Mazhabian as described in the headnote of the plaint was passed in favour of the decree holder-plaintiff.

Admittedly, first appeal bearing RFA No.870 of 1979 filed against the said judgment and decree was dismissed by this Court vide judgment dated 04.02.2005 and now the said judgment and decree have become final. The decree-holder-plaintiff, accordingly, filed the execution in which the objections were field by the J.D.-petitioner-Shiromani Gurudwara Parbandhak Committee, Amritsar, in which the objections were raised regarding the identity of the property, stating that the site plan produced at the time of filing execution is not correct. The said objections were negated by the Executing Court.

At the time of arguments, learned counsel for the petitioner has confined his arguments only on the point of identity of the property as sought to be established by the J.D.-petitioner from a fresh site plan produced at the time of execution and not originally attached with the plaint.

It comes out from the decree itself that one site plan was attached with the plaint, in which property in dispute was mentioned by boundaries and shown in the red colour. Now, at the time of execution, decree-holder has filed a fresh site plan, claiming that it is same, which is mentioned in the decree. The said site plan is disputed by the J.D.-petitioner that there is nothing on the file to show that the Executing Court ask the decree holder to produce the site plan attached with the plaint or gave an opportunity to the J.D.-petitioner to produce the site plan attached with the plaint, so as to controvert the fresh site plan produced at the time of execution.

Learned counsel for the decree holder-plaintiff has contended that the original file has lost. Therefore, the original site plan is not traceable.

However, this is nowhere mentioned in the the impugned order.

Admittedly, the decree has to be executed. In the decree, unluckily the measurements of each boundary were not mentioned nor the total area was mentioned. Therefore, once the fresh site plan produced by the decree holder-plaintiff at the time of execution is disputed, the Executing Court is to first determine as to what was the property regarding which the decree is to be executed.

For this purpose, the Executing Court should have summoned the original file along with the original site plan and if the same is not traceable, as the stated by learned counsel for the decree holder-plaintiff, the efforts should have been made to reconstruct the site plan or allow the parties to lead secondary evidence, so as to produce the copy of the said site plan and then compare with the same with the site plan produced by the decree holder-plaintiff to find out the property, regarding which the decree was passed. For this purpose, an opportunity should have been granted to the J.D-petitioner.

In these circumstances, the impugned order is set aside. The Executing Court is directed to trace out the original file along with site plan and if the same is not traceable, give opportunity to the parties to lead evidence. After granting opportunity to the parties to lead evidence, decide as to what is the exact dimension of the property, regarding which the decree is to be enforced. Thereafter, enforce the execution of the decree.

Both the parties are directed to appear before the Executing Court on 07.04.2018 at 10.00 a.m.

The Executing Court can always pass an order, stating as to what are the exact boundaries, measurements and dimensions have been

established, in terms of the decree. It is also directed to decide the application filed by the decree holder for staying the construction on the property within two weeks from the date of receipt of certified copy of this order. If in the meanwhile, any construction is raised on the disputed property, the same shall liable to be removed, in case the execution is enforced against the said property.

Considering that the execution is very old, the Executing Court is directed to dispose of the same expeditiously, preferably within six months.

As such, the present petition is allowed. Since, the main regular second appeal has been allowed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 23, 2018

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Whether speaking / reasoned Yes

Whether Reportable: No