

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No. 59 of 2014 (O/M)
Date of decision : 20.4.2018

Sunita Kumari and others Appellants

Versus

Sham Sunder Sharma and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Dogra, Advocate, for appellants.

Mr. M.S. Sachdev, Advocate, for respondent No. 1.

Mr. Harsh Aggarwal, Advocate, for respondents No. 2 and 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 ?

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KULDIP SINGH J. (ORAL)

Impugned in present Execution Second Appeal is order dated 3.9.2012, passed by learned Additional Civil Judge (Senior Division), Jalandhar, vide which execution application filed by petitioner was dismissed on the ground that decree dated 22.1.2009 has been duly complied with by JDs to the extent under their control while that in first floor it is hampered by DH himself. The appeal against said order was dismissed by learned Additional District Judge (Adhoc), Fast Track Court, Jalandhar, vide order dated 25.2.2014.

I have heard the learned counsels for parties and have also carefully gone through the file.

It comes out that in the civil suit filed by plaintiff-petitioner, a decree for mandatory injunction was passed directing defendants No. 2 and 3 i.e. Municipal Corporation, Jalandhar through its Commissioner and

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Commissioner, Municipal Corporation, Jalandhar to remove the illegal construction raised by defendant No. 1 over the exclusive wall of house of plaintiff shown in red colour, fully elucidated in head note of plaint within a span of two months. and defendant No. 1 was further restrained from running factory in residential area which is polluting unit and is source of nuisance to residents of locality. For the execution of said decree, execution was filed in which objections were filed by JDs No. 2 and 3. The Executing Court recorded the evidence of both the parties and came to conclusion that factory has already been closed by JD No. 1 and that wall of the second floor has been removed and when wall on the first floor was to be removed, they were restrained by decreeholder that if the wall is demolished, it will also damage his house. Consequently, execution was dismissed. It comes out that so far as closure of factory is concerned, that part has been complied with. Now, only part of decree survives for execution is demolition of illegal construction. What was illegal construction, was not specifically mentioned in decree. Therefore, it was left to Executing Court to find out the same. Apparently, dispute is regarding a common wall on the first floor and second floor.

The learned counsel for decreeholder has stated that some part of the wall on second floor has been eroded and that wall on first floor is not being removed. Apparently, since wall on second floor was stated to be party wall, therefore, JD can retain the wall of the portion which falls within their boundary. So far as wall on first floor is concerned, Executing Court has appointed a local commissioner and he came to the conclusion that DH himself is not allowing the demolition of party wall on the ground that if wall is removed, it will not only result in collapse of the house of JD, but

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also the house of decreeholder. It being so, there is nothing to differ with the view taken by both the Courts below that decree has been duly complied with so far as possible.

The learned counsel for decreeholder states that weight of wall on first and second floor is on the land falling in possession of decreeholder.

Assuming that said wall belongs to decreeholder, even then Executing Court was to first find out as to whether that construction is illegal by which JDs rested their roof on said wall. In the absence of any proof that construction is illegal, it cannot be said that said part of decree was not complied with.

Dismissed.

Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

20.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No