

**(108) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.6194 of 2018

Date of decision : 11.02.2019

HARDIP SINGH AND OTHERS.

..... PETITIONERS

VERSUS

RANI.

.... RESPONDENT

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. K.S. Rekhi, Advocate for the petitioners.

B.S. WALIA, J.

[1] Challenge in the revision petition is to order Annexure P-1 dated 01.09.2016, passed by the learned Civil Judge (Junior Division), Ajnala dismissing the objections, as also order Annexure P-3 dated 11.05.2018, passed by the learned Additional District Judge, Amritsar, dismissing appeal against order Annexure P-1 dated 01.09.2016.

[2] Brief facts of the case, leading to the filing of the revision petition are that the respondents filed a civil suit for possession against the petitioners-defendants which was dismissed by the learned Civil Judge (Junior Division), Ajnala vide judgment and decree dated 07.02.2015. However, appeal was allowed by the learned Additional District Judge, Amritsar vide judgment and decree dated 18.01.2016 and judgment and decree dated 07.02.2015 was set aside and the suit filed by the respondent-plaintiff was decreed with costs *qua* the relief of possession of the house in question.

[3] Thereupon respondent-DH/plaintiff filed execution in the Court of the learned Civil Judge (Junior Division), Ajnala, in which the

petitioners/JDs/defendants filed objections that the respondent-decree holder had filed a wrong site plan which was of a property different than the property owned and possessed by the petitioners/defendants/JDs/objectors and that the petitioners/JDs/objectors were owners in possession of the property measuring 6 marlas bounded towards the East by house of Mohan Lal, West house of Balwinder Kumar, North house of Surinder Kumar and South house of Manohar Lal, the alleged site plan filed by the Respondent/decreed holder did not tally with the property owned and possessed by the Petitioners/JDs/defendants/objectors for as per the site plan filed by the respondent/decreed holder, the property was bounded towards East by house of Kishan Chand, West house of Ramesh Chander, North house of Manohar Lal and South house of Balwinder Kumar, respondent/decreed holder was alleging that the property bore *khasra* No.80, whereas the property owned and possessed by the petitioners/JDs/defendants/objectors was situated within '*Lal Lakir*' and its description was clearly mentioned in sale deed dated 07.02.2008 executed by Rajnish Kumar and Krishna and the boundaries of the house of the petitioners/JDs/objectors/defendants was clearly described in the sale deed which were consistent with the boundaries as mentioned in the site plan filed by the petitioners/JDs/objectors, the respondent/decreed holder had no concern whatsoever with the property exclusively owned and possessed by the petitioners/JDs/defendants/objectors, as such, the execution filed by the respondent-decreed holder was legally unsustainable.

[4] The respondent-plaintiff/decreed holder filed reply to the objections that the property in question was allotted to Bhag Mal vide

conveyance deed dated 25.01.1969 and after his death, the same was inherited by his son Bal Nath who also died and after his death the property in question was inherited by his legal heirs namely Mahindro, Jinder, Saudagar Nath and Indra Rani. All the LR's of Bal Nath executed sale deed dated 25.06.1998 in favour of Satpal s/o Raunki Ram whereas, as per the petitioners/JDs/defendants/objectors, they had purchased the property in question from Krishna widow of Saudagar Nath and Rajnish son of Saudagar Nath, vide sale deed dated 07.02.2008. However, as on said date, Krishna and Rajnish, widow and son of Saudagar Nath were not having any title of the suit property as husband of Krishna and father of Rajnish namely Saudagar Nath had already sold his share along with other co-sharers in favour of Satpal husband of the respondent/plaintiff-decree holder. Besides Krishna and Rajnish, widow and son of Saudagar Nath had filed civil suit No.228 of 1996, titled as 'Krishna and others versus Ujagar Singh' i.e. other LR's of Bal Nath which was decided on 16.04.1998 by the then Additional Civil Judge (Senior Division), Ajnala, in which Krishna specifically mentioned the surrounding of the property in question as are mentioned by the respondent-decree holder-plaintiff. Sale deed in favour of the petitioners/JDs/Objectors/defendants was categorically rejected by the learned Additional District Judge, Amritsar vide judgment and decree dated 18.01.2016. The objections filed by the petitioners/defendants/JDs were dismissed by the learned Executing Court vide order dated 01.09.2016, as also by the learned Additional District Judge, Amritsar vide order dated 11.05.2018.

[5] Learned counsel for the petitioners reiterated the objections raised and contended that the impugned order passed by the learned

Executing Court dated 01.09.2016 as well as order dated 11.05.2018 passed by the learned Additional District Judge, Amritsar were legally unsustainable, therefore liable to be set aside and the objections accepted.

[6] I have heard learned counsel. Admittedly, the respondent-decree holder sought execution of decree dated 18.01.2016 passed by the Court of Shri K.K. Goyal, learned Additional District Judge, Amritsar against the petitioners/defendants/JDs/Objectors with regard to the suit property as is reflected in the site plan (Ex. P-4). The same boundaries are mentioned in the suit i.e. East house of Krishan Chand, West street and house of Ramesh Chander, North house of Manohar Lal and South house of Balwinder Kumar. Decree was passed by the Court of Shri K.K. Goyal, Additional District Judge, Amritsar on 18.01.2016 on the basis of description and boundaries as mentioned in the plaint and as reflected in the site plan (Ex. P-4). Likewise, execution application was filed for getting possession of the suit property as reflected in the site plan proved during the course of the trial. Admittedly, decree dated 18.01.2016 attained finality as RSA No.1027 of 2016 was dismissed on 03.03.2016 and the petitioners/JDs/objectors/defendants were the contesting defendants of the suit upto the High Court and their claim with regard to genuineness of their title over the suit property, as well as with regard to identity of the suit property was decided on merits. As regards, the plea of there being difference of identity of suit property as far as *khasra* number was concerned, the learned Additional District Judge, Amritsar held that the suit property was reflected as comprised in *khasra* No.80 as per *jamabandi* for the year 1993-94 whereas perusal of the same *jamabandi* pertaining to the year 2013-14 placed on the record of

the execution file revealed that *khasra* No.80 was specific number of 'Abadi Deh' which was nothing other than description of the area of the village and that any property situated within the *Abadi* was identified to be within the '*Lal Lakir*' meaning thereby within the boundary of that village bearing specific *khasra* No.80.

[7] In the light of the position as noted above, plea of the petitioners was rejected by the learned Additional District Judge, Amritsar. Admittedly, the property in question was allotted to Bhag Mal vide conveyance deed dated 25.01.1969 and after his death, the same was inherited by his son Bal Nath, who also died, whereafter his property was inherited by his legal heirs Smt. Mahindro, Jinder, Saudagar Nath and Indra Rani, who executed sale deed dated 25.06.1998 in favour of Sat Pal son of Raunki Ram, husband of the respondent-decree holder/plaintiff. Stand of the petitioners/JDs/Objectors is that they purchased the property in question from Krishna, widow of Saudagar Nath and Rajnish, son of Saudagar Nath through sale deed dated 07.02.2008. However, once the legal heirs of Bal Nath including Saudagar Nath, predecessor-in-interest of Krishna and Rajnish had along with the other legal heirs sold their share of the property to the husband of the respondent-plaintiff/decree holder on 25.06.1998, then, as on 07.02.2008, Krishna and Rajnish did not have any title over the suit property. Besides, Krishna and Rajnish filed Civil Suit No.228 of 1996 against the other legal heirs of Bal Nath which was decided on 16.04.1998, wherein petitioners/objectors/defendants specifically mentioned the same surrounding as have been mentioned by the decree holder. Thus, the petitioners/JDs/defendants/objectors cannot blow hot and cold in the same breath as they derived

title from Krishna and Rajnish, widow and son of Saudagar Nath and in respect of which claim of the petitioners has been rejected by the Court of Shri K.K. Goyal, Additional District Judge, Amritsar. Besides Smt. Krishna while appearing as DW-3 categorically admitted that the property in question was the same property which was allotted to Bhag Mal vide conveyance deed dated 25.01.1969 as also that the property in question was the same which belonged to Bal Nath. She did not raise any objection regarding identity of the property during the suit as well as while appearing as defendant witness. The sale deed in favour of the petitioners/JDs/objectors was categorically rejected by the learned Appellate Court. Thus, the site plan and the description of the property as given in the head note of the plaint, which was relied upon in the civil suit for determining the rights of the parties and which had attained finality, could not have been challenged in the execution proceedings as it is settled law that the Executing Court cannot go beyond the decree.

[8] In the light of the position noted above, no grounds exist warranting interference with the well reasoned order Annexure P-1 dated 01.09.2016 passed by the learned Executing Court, as well as order Annexure P-3 dated 11.05.2018 passed by the learned Appellate Court. Accordingly, finding no merit in the revision petition, the same is *dismissed in limine*.

(B.S. WALIA)
JUDGE

FEBRUARY 11, 2019
'rajneesh'

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No