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

CR No. 6632 of 2017 (O&M)
Date of Decision: 05.02.2019

Kuldeep Singh @ Keepa Singh

-Petitioner

Vs

Nirbhai Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.P.S. Smagh, Advocate,
for the petitioner.

Mr. R.S. Rangpuri, Advocate,
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has preferred this revision petition against the order dated 08.08.2017 passed by Additional Civil Judge (Senior Division), Sri Muktsar Sahib vide which application under Order 21 Rule 32 CPC filed by the respondents was allowed and the petitioner was directed to vacate the encroached land within two months from the date of passing of the order and in case of failure to comply with the order, he along with others was to be sent to civil imprisonment for two months on depositing subsistence charges by the plaintiffs and their property was ordered to be attached.

Plaintiffs filed a suit for permanent injunction

restraining the defendant from interfering in the peaceful possession of the plaintiffs and from dis-possessing the plaintiffs forcibly except in due course of law from the suit land comprised in Khasra No.330 (2-0) situated in the area of Village Khokhar, Tehsil and District Sri Muktsar Sahib.

Petitioner was arrayed as defendant No.3 in the suit.

The suit was decreed exparte vide judgment and decree dated 14.07.2015. Defendants were permanently restrained from interfering into peaceful possession of the plaintiff and from dis-possessing the plaintiff illegally and forcibly from the land fully detailed in the head note of the plaint.

Thereafter, decree holder filed an application under Order 21 Rule 32 CPC for enforcement of judgment and decree dated 14.07.2015 passed by the trial Court and for demolishing the illegal construction raised by the defendants including defendant No.3-petitioner.

The Executing Court passed the impugned order even after noticing the fact that in the report of Local Commissioner, Khasra No.330 (2-0) was found in place. No observation was made by the Local Commissioner as to its encroachment by anyone, but on the basis of overall discussion made in the judgment, impugned order was passed.

The Executing Court took cognizance of a

compromise which was effected in the Police Station on 07.01.2016. The Court also took cognizance of the cross-examination of the petitioner wherein it was admitted that he had purchased the constructed house from Balvir Singh but in the cross-examination, the house was found to have been constructed about 20/22 years earlier. The house was in Khasra No.29 and has no relevance with the suit property bearing Khasra No.330(2-0).

It appears from the record that factum of alleged encroachment over Khasra No.330(2-0) could not be established on record by means of any concrete evidence. The report of Local Commissioner was conspicuously silent with regard to encroachment, rather the same was to the effect that Khasra No.330(2-0) was capable of being demarcated and the same was found in place.

Notice of motion was issued on 09.10.2017 and the following order was passed:-

“CM No.21180-CII of 2017

Application is allowed as prayed for.

Annexure P-6 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.6632 of 2017

Heard.

Notice of motion for 10.01.2018 to

respondents No.1 and 2.

In the meanwhile, operation of the impugned order shall remain stayed but subject to the condition that the petitioner shall deposit an amount of Rs.50,000/- with the executing Court within a period of 15 days. On necessary deposit being made, the amount shall be converted into a Fixed Deposit Receipt payable to the successful party. In case the petitioner fails to deposit the amount within the stipulated period, stay granted by this Court would stand automatically vacated.”

In the subsequent order dated 10.01.2018, interim order was vacated as there was non-compliance in terms of depositing an amount of Rs.50,000/- with the Executing Court within the prescribed time. No such amount was deposited by the petitioner. The said order was vacated on 10.01.2018.

On a pointed query from the Court, it has come to the knowledge of the Court that the decree holder has not approached the Executing Court even after vacation of interim stay by the High Court on 10.01.2018 and has not pressed for execution of exparte judgment and decree till date.

This Court is not in a position to appreciate the fact and observation of the Executing Court in passing the impugned order in the absence of any material to show encroachment made by the petitioner on the suit property. The provision is

having the effect of curtailing the liberty of the petitioner for which there has to be a positive finding by the Executing Court that the judgment debtor has violated the decree intentionally by encroaching upon the suit property despite decree dated 14.07.2015.

Every violation is not punishable. In terms of Order 21 Rule 32 CPC, violation has to be intentional.

In the instant case, no material has come in respect of any encroachment over Khasra No.330(2-0). Even the report of Local Commissioner is not suggestive of the fact that the said Khasra number was ever encroached by the petitioner, rather the same was found to be intact and was held to be capable of being demarcated.

In the absence of such material, in my considered opinion, impugned order dated 08.08.2017 is not sustainable in the eyes of law.

Hence, the impugned order dated 08.08.2017 is set aside and the revision petition is accepted.

Normal consequences to follow.

05.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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