

253

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

CR No. 7586 of 2018

Date of Decision: 07.05.2019

Subodh Singh

-Petitioner

Vs

Krishan Gopal

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Dhaliwal, Advocate,
for the petitioner.
Mr. Vishal Aggarwal, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has preferred this revision petition against the order dated 12.07.2018 passed by Civil Judge (Junior Division), Ludhiana vide which objections under Section 37 CPC have been dismissed.

2. Necessary facts are to be noticed.

3. Respondent-plaintiff filed a suit for possession by way of specific performance of the property bearing No.B-IX-1015 having an area of 122 square yards comprised in Khasra No.945, Khata No.1589/2130 situated in Gali No.1, Shimlapuri Gali No.8, Ludhiana as per jamabandi for the year 1995-96.

4. In the said suit, defendant after appearing through an

Advocate and filing written statement was proceeded against exparte. The suit was decreed exparte vide judgment and decree dated 04.06.2009 passed by the trial Court. The said decree has already attained finality in the absence of any challenge made by the defendant-petitioner. Thereafter, an application under Order 9 Rule 13 CPC was filed for setting aside exparte judgment and decree dated 04.06.2009 on 03.01.2011.

5. On the next date, the said decree was also challenged in an independent suit for declaration and permanent injunction. The suit was filed on 04.01.2011. The suit was dismissed by the trial Court vide judgment and decree dated 12.07.2018, against which an appeal is pending consideration before the lower Appellate Court.

6. An application under Order 9 Rule 13 CPC has also been dismissed by the Civil Judge (Junior Division), Ludhiana vide order dated 18.10.2018, against which an appeal is pending before the Appellate Court.

7. The aforesaid fact has been concealed in this revision petition.

8. In execution of decree dated 04.06.2009, the sale deed has already been executed with the process of the Court. Delivery of possession in respect of property in question is

being delayed by the judgment debtor by resorting to all possible litigation. Decree dated 04.06.2009 has attained finality.

9. In the written statement filed in the said suit, the defendant-petitioner has not denied his ownership qua the suit property, rather tried to project a case of malafide and collusion at the instance of Inder Pal Singh, Manager of OBC.

10. On merits, the ownership qua the property in question was not denied. Thereafter, he preferred to be proceeded against exparte by not appearing in the Court through his counsel. He was proceeded against exparte vide order dated 16.01.2007. Thereafter, plaintiff led his exparte evidence and ultimately, the suit was decreed exparte.

11. In execution of said decree, sale deed has already been executed and delivery of possession is being opposed by the petitioner. The trial Court has already granted protection during pendency of application under Order 9 Rule 13 CPC. That relief was co-terminus with the decision of application under Order 9 Rule 13 CPC.

12. In the appeal filed against the judgment and decree dated 12.07.2018 passed by Civil Judge (Junior Division), Ludhiana, petitioner has also preferred an application for interim relief.

13. There is no scope for interference in this revision petition.

14. Petitioner may avail his legal remedies in accordance with law.

15. By way of objections in the execution, petitioner cannot be permitted to re-open the concluded judgment and decree dated 04.06.2009 that too on the basis of untested material. In the event of doing so, that would be an abuse of process of law.

16. Judgment and decree dated 04.06.2009 is not amenable to the judicial review that too at the stage of execution on the basis of some alleged material which is sought to be projected before this Court. Substantive litigation has already come to an end when suit for specific performance was decreed and no appeal was preferred against that judgment and decree. After attaining finality on 04.06.2009, Executing Court cannot sit over the judgment and decree.

17. The principle of finality is based on high principle of public policy. It is equally important to prevent unscrupulous litigant from taking undue advantage through the process of the Court. It is an onerous duty and obligation of the Court to ensure that undue enrichment is not drawn by the losing party by invoking process of the Court on the basis of some untested

material.

18. Doctrine of *stare decisis* is very valuable principle of precedent which cannot be departed in ordinary circumstances.

The view expressed in **Manganese Ore (India) Ltd. Vs The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124** and **Green View Tea & Industries Vs Collector, Golaghat and anoter, 2002(2) RCR (Civil) 362** can be relied in this context.

19. For the reasons recorded hereinabove, I deem it appropriate to dismiss this revision petition.

20. The Executing Court shall execute the decree as per the nomenclature of the suit property in accordance with law.

07.05.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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