

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

**CR No.9145 of 2017(O&M)
Date of Decision: 12.03.2019**

**Harnam Singh since deceased through his LR Harvinder
SinghPetitioner**

Versus

Madan Mohan and othersRespondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Hari Om Sharma, Advocate
for the petitioner.

Mr. S.S. Sudan, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 15.12.2017 passed by Additional Civil Judge (Senior Division), Kalka vide which objections filed by the judgment debtors were dismissed for the reasons recorded in the impugned order.

[2]. Perusal of the record would show that in a suit for mandatory injunction and permanent injunction filed by the plaintiff/respondent No.1, trial Court passed judgment and

decree dated 03.08.2012. The suit of the plaintiff was decreed with costs. Defendants were directed to remove the trees and shrubs planted along with the boundary wall of the plaintiff's house. Defendants were further directed to remove the iron hooks of the gate of the defendants inserted in the boundary wall of the plaintiff and to remove the kacha nali which was made along with the boundary wall of the plaintiff's house. Defendants were also permanently restrained from obstructing the passage and front portion of the Southern side of the house of the plaintiff except in due course of law. The said judgment and decree had already attained finality as the same was never assailed by the defendants/judgment debtors.

[3]. Thereafter, in the execution filed by the decree holder/respondent No.1, Local Commissioner was appointed vide order dated 04.04.2014 read with order dated 30.05.2014 to execute the decree in question with the police help. Local Commissioner visited the spot along with the police. In the report dated 12.11.2014, it was reported that the judgment debtors did not allow to remove the trees and shrubs planted by them along with boundary wall of the decree holder on the pretext that they themselves would get the same removed within one month or so. The immediate removal of the trees and branches would have caused to the boundary wall to fall

because many of the trees and branches had crept through boundary wall of the decree holder. Katcha nali of the house of the judgment debtors was got filled and the judgment debtors had already got the hooks in the gate removed. The obstruction by way of shrubs and other bushes was found standing on the front side of the house of the plaintiff which was 58 feet and the same could not be removed as the judgment debtors had suggested that the decree holder could get the front of his house cleaned at any time by removing the shrubs and bushes at his own. The process was video graphed and after removal of the branches and shrubs from the side of the decree holder, the same was got photographed.

[4]. The second Local Commissioner was appointed vide order dated 23.03.2015 for cutting the trees at the spot with the assistance of the police. Local Commissioner visited the site on 09.06.2015 along with the police. Judgment debtor namely Bakshinder Kaur made a request that the remaining trees which were seven in number were fruit bearing trees and the same be cut after the season was over. She made statement before the concerned quarters in the aforesaid context. Son of Bakshinder Kaur and other persons even threatened the Local Commissioner and the decree holder, so the trees could not be cut. The report was submitted by the Local Commissioner on

30.07.2015.

[5]. Perusal of the record would also show that the Local Commissioner was appointed even thereafter under the orders of the Court and the Local Commissioner had visited the spot on 05.10.2016 in pursuance of order dated 22.07.2016 passed by the trial Court. Again a report was submitted by the Local Commissioner on 27.10.2016. The report was detailed report where overt-acts on behalf of the judgment debtors were highlighted. Non-cooperation of the police was also deprecated in the report dated 02.05.2017. Incriminating facts were highlighted by the Local Commissioner and the situation even remained the same in the next report dated 05.01.2018 submitted by the Local Commissioner.

[6]. Even after passing of the order dated 22.12.2017 passed by this Court at the time of notice of motion, Local Commissioner had visited the site and in view of *status quo* regarding existence of trees, needful in the context of execution of decree could not be done. The statement of Local Commissioner was recorded by the Court. Statement of Bakshinder Kaur widow of Harnam Singh was recorded by the Local Commissioner on 09.06.2015, wherein she had stated that the trees along with the wall of the plaintiff were fruit bearing trees and she would get these trees cut after harvesting

of the fruits.

[7]. Judgment and decree dated 03.08.2012 passed by the trial Court has already attained finality. Executing Court cannot go beyond the decree and the directions issued by the trial Court in pith and substance have to be executed. Perusal of the photographs brought on record by the decree holder would show that the trees have sneaked into the wall of the decree holder and the roots and branches of the trees have sneaked into the wall. At some places, the wall has become dilapidated and developed cracks.

[8]. In view of facts and circumstances of the case, I see no justification to interfere in the execution of a lawful decree dated 03.08.2012 which has already attained finality in the absence of any challenge made by the judgment debtors. This revision petition is accordingly dismissed.

12.03.2019

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**