

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

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**CR No. 2685 of 2019 (O & M)
Date of Decision : 23.5.2019**

Naresh Kumar and others

.....Petitioners

v.

Municipal Committee, Bawal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present : Mr. Arvind Kumar Yadav, Advocate, for the petitioner

KULDIP SINGH, J. (Oral)

Impugned in the present revision is order dated 12.3.2019 (Annexure P-7), passed by the learned Additional Civil Judge (Senior Division), Bawal, vide which the objections filed by the present petitioners were dismissed.

It comes out that the decree holders/respondents had filed a civil suit, which was dismissed by the trial Court but allowed in appeal and a mandatory injunction was issued directing the respondent-Municipal Council to vacate the encroached portion as shown in red colour in site plan Ex.PG, prepared by the local Commissioner, within a period of 4 months. However, liberty was granted to the Municipal Council to acquire the same in accordance with law and in that eventuality the plaintiffs shall be entitled to the compensation only as per law and they will not be entitled to any mandatory injunction. The land is not stated to be acquired by the Municipal Council. Now the decree holders filed an execution petition to get the said site vacated by the Municipal Council. The present petitioners are the inhabitants of Ward

No.2, Municipal Council, Bawal. They claimed that the suit property is in fact a passage and being used by them for the last several years. It is not part of Mustatil No. 85, Killa No. 29/2/1 and 29/2/2, as shown in the site plan Ex.PG. The objections were dismissed by the Executing Court.

I have heard learned counsel for the parties and have gone through the case file.

Learned counsel for the petitioners relies upon the provisions of Order 21 Rule 99 CPC, which reads as under :

“O XXI R.99. Dispossession by decree-holder or purchaser – (1)

Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

It is claimed that since the present petitioners are third party and are being dispossessed from the property, they would file third party objections under Order 21 Rule 99 CPC.

I am of the view that the said provisions are not attracted in the present case. Decree holders had filed a suit that the Municipal Council has encroached upon the said portion, which according to the Municipal Council was a passage. The trial Court after demarcation by the local Commissioner, came to the conclusion that the Municipal Council has encroached upon the same. Now what the present petitioners want to claim in the representative capacity is that in fact the said disputed site is a passage vested in the Municipal Council and being used by them. They merely wants to use the

same as passage. Therefore, it is not a case where the present petitioners third party is being dispossessed. In fact, by filing the objections, the present petitioners third party want the Executing Court to record the findings that the said property is not a passage, which is contrary to the findings recorded in the decree. As such, provisions of Order 21 Rule 99 CPC are not attracting in the present case and the objections of the petitioners were rightly dismissed. However, the petitioners are always at liberty to file a separate suit in representative capacity against the appropriate persons to declare the character of the disputed property and their rights therein.

Dismissed.

(KULDIP SINGH)
JUDGE

23.5.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No