

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 130

CR-5270-2019

Date of decision : 22.10.2019

Lakhwinder Singh and another

..... Petitioners

VERSUS

Anirudh Vashisth and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajeshwar Singh, Advocate, for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 03.07.2019, passed by the Additional Civil Judge (Senior Division), Sunam (for short, the Executing Court) through which an application filed by the respondents under Order 21 Rule 32 CPC seeking therein execution of the judgment and decree dated 26.03.2014, passed by the Additional Civil Judge (Senior Division), Sunam (for short, the Trial Court) has been allowed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondents, through their predecessor-in-interest, filed a suit seeking therein to restrain the petitioners from interfering in their peaceful possession of land detailed and described in the head note of the plaint (for short, the suit property). On being put to notice, the petitioners, who were the defendants, appeared before the Trial Court and contested the respondents' claim. Inter alia, the case set up by the petitioners was that out of the suit property it was they who were in possession of land measuring 4 kanals and 5 marlas and in support of their claim they produced a demarcation report dated 25.05.2011 (Mark-A). The Trial Court rejected the aforesaid demarcation report and on the admission by petitioner No. 1-Lakhwinder Singh that the respondents were in possession of the suit property decreed the respondents' suit. Admittedly, such decree attained finality. Since after the passing of the aforesaid decree the

respondents were dispossessed by the petitioners from 4 kanals and 5 marlas of land out of the suit property the respondents filed an application under Order 21 Rule 32 CPC seeking therein enforcement of the judgment and decree of the Trial Court dated 26.03.2014. Before the Executing Court the petitioners took up the same defence as they had taken before the Trial Court and on the basis of the demarcation report produced before the Trial Court as Mark-A claimed to be in possession of 4 kanals and 5 marlas of land out of the suit property even before the aforesaid decree of the Trial Court had been passed. The Executing Court rejected the petitioners' claim and directed enforcement of the decree of the Trial Court. Such order of the Executing Court is under challenge in the present proceedings.

Learned counsel for the petitioners has been heard.

It is not disputed that through judgment and decree dated 26.03.2014 the Trial Court had restrained the petitioners from interfering in the respondents' possession over the suit property and that such decree has attained finality. A perusal of the aforesaid judgment and decree reveals that the case set up by the petitioners/defendants before the Trial Court was that the suit property except 4 kanals and 5 marlas were in the possession of the petitioners and in support of such claim they had produced a demarcation report (Mark-A). The Trial Court considered the evidentiary value of the aforesaid demarcation report and rejected the same. Further, relying on the admission made by petitioner No. 1 that it was the respondents who were in possession of the entire suit property, the Trial Court had decreed the respondents' suit. After the passing of the decree, on being dispossessed from 4 kanals and 5 marlas of land, the respondents filed an application Order 21 Rule 32 CPC seeking enforcement of the decree in their favour. In their objections, filed by the petitioners before the Executing Court, while relying on the afore referred demarcation report (Mark-A before the Trial Court), they claimed that it was they who were in possession of such land even

prior to the passing of the decree by the Trial Court.

The petitioners' stand is found to have been rightly rejected by the Executing Court as a similar plea raised by them before the Trial Court was considered and rejected by the Trial Court leading to the passing of the injunction decree in favour of the respondents. The petitioners cannot be allowed to take up the same again and that too before the Executing Court as the Executing Court cannot go beyond the decree.

The reliance of the learned counsel for the petitioners on the award of the Lok Adalat, Sunam dated 25.05.2013 through which the petitioners were held to be in joint possession of the aforesaid 4 kanals and 5 marlas of land is also found to have been rightly rejected by the Executing Court as such award had admittedly come into existence even prior to the passing of the decree of the Trial Court but was never produced by the petitioners during the course of the trial. The respondents-decree holders were also not a party to the proceedings leading to the passing of such award and thus, the same could not bind the respondents.

Dismissed.

22.10.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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