

Rajender Singh

.....Petitioner

Versus

Malkhan Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. P.R. Yadav, Advocate
for the petitioner.**NIRMALJIT KAUR, J.**

The present revision petition is filed against the order dated 11.12.2018, passed by the Chief Judicial Magistrate, Rewari (for short, the Executing Court), vide which, execution petition filed by the petitioner, was dismissed.

A suit for permanent injunction filed by the petitioner, was decreed on 28.11.2009 and it was ordered that the defendants are restrained from interfering in the possession of the plaintiff, over the well, as co-sharer by putting sticks, dung cakes etc. in the Kayami of the well. Thereafter, a contempt petition under Order 39 Rule 2-A CPC was filed on the ground that the said judgment had been violated. However, the same was dismissed on 24.04.2015 on the ground that there was no evidence on record to show any violation of the judgment and decree. Subsequently, the petitioner had filed execution petition after passing of the decree dated 28.11.2009 on the ground that the respondents raised pucca construction over the Kayami of the well and closed the passage of the petitioner. The said execution petition was dismissed vide order and judgment dated 11.12.2018 on the ground that there was no evidence to show that there was any violation and also on the

ground that the earlier contempt petition already stands dismissed.

Learned counsel for the petitioner while praying for setting aside the impugned order dated 11.12.2018 raised the following arguments:

- a) The Executing Court did not take note of the fact that the well and construction was done after the dismissal of the contempt petition. Therefore, the execution petition should have been dealt independently of the findings of the judgment and observation made in the order dated 24.04.2015, dismissing the contempt petition.
- b) The Court refused to look into the report of the Local Commissioner, who visited the spot and prepared his report. As per the same, no passage was left for ingress and egress of the petitioner from his tubewell as near the tubewell whole area was occupied by the respondents and their family members.
- c) In reply to the execution petition, the respondents did not deny that they had raised construction after the passing of the judgment and decree dated 28.11.2009.

Learned counsel for the petitioner was heard at length.

While filing of the contempt petition, it was contended that the respondents are interfering in their peaceful possession and were installing underground pipe line. However, the same was dismissed as the petitioner could not prove that there was any violation of the decree. The said contempt petition was dismissed on 24.04.2015. Thereafter, the execution petition was filed on 14.10.2015, which was only after a gap of about 5-6 months. The argument that the same was filed because this time they have violated the decree by making a boundary wall and pucca construction,

could not be proved before the Executing Court, as not an iota of evidence has been placed on record to show that the boundary wall, if any, was constructed by the Judgment Debtors and that too after the dismissal of the contempt petition.

Learned counsel for the petitioner, however, insisted that the same was made after the dismissal of the contempt petition is evident from the fact that there is no mention of the wall and construction ever before and the said objection to violation has been raised for the first time which shows that there was no construction before the passing of the judgment & decree and violation is after the contempt petition.

However, none of the arguments come to rescue of the petitioner.

The first argument is totally vague. There is no date as to when the said wall was constructed. The wall or construction, if any, could not have been made in a day. The petitioner seems to have allowed the same to be done without raising any objection or making any noise. In case the same was being done in violation of the decree, a complaint should have been made to the police. No photograph has been placed on record to show that the construction was going on. No date and time when the construction was being raised is mentioned. Every photograph clicked by a mobile will show the place, date and time when it was clicked. Even, a straight and simple evidence of this type has not been provided. Hence, there is nothing on record to show there was no construction before the decree and that the construction, if any, is only after the dismissal of contempt petition.

The second argument with respect to the report of the Local

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Commissioner also does not help. The said report is totally silent as to whether the construction is after the passing of the decree or after the dismissal of the contempt petition, as stated. In fact, the report of the Local Commissioner mention a kothri and some pucca wall existing on the spot made by the petitioner.

The third argument is also of no help. In reply, the allegations are denied by the respondents and it is rather alleged that construction is made by the petitioner himself as also mentioned in the Local Commissioner Report.

In view of the above discussions, the revision petition is dismissed being devoid of any merit.

03.12.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

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