

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

**ESA-3451-1985 (O&M)
Decided on: 03.03.2020**

Thakar Dass (since deceased) through his LRs and others

... Appellants

Versus

Karam Chand (since deceased) through his LRs and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Salil Bali, Advocate, for the appellants.

Mr. Ajay Jain, Advocate for respondent-1.

MAHABIR SINGH SINDHU, J.

Appellants are the decree holders; whereas respondent No.1 is the third party -Objector. Dispute pertains to a small house consisting of one constructed Room (17'x9') and some open space on its frontage; which shall be referred as "house in dispute".

Initially, during execution of civil court decree dated 12.12.1980, respondent No.1 was dispossessed from the house in dispute at the instance of appellants on 22.10.1983 with police help. Later on, executing court vide order dated 25.07.1985 partly accepted his objections and restored back the possession qua constructed Room ,but claim for vacant area was declined. Appellate Court, vide impugned judgment dated 19.11.1985, accepted the appeal of respondent No.1 qua vacant area as well.

Now, appellants are in Execution Second Appeal, for short (ESA).

2. Brief facts of the case are that Bishan Dass-Plaintiff (since deceased) filed civil suit No. 233 of 1979, dated 09.04.1979 against the Defendants-Judgment Debtors, here-in-after referred as 'JDs' for declaration to the effect that he is owner of plot No.18/3A, measuring 182 sq. yards situated in Village Barwala, Tehsil Hansi, District Hisar, purchased by him through open auction held on 29.05.1971 for a sum of Rs.910/-; further claim was for permanent injunction restraining the JDs from partitioning the plot into two parts i.e. 18/3-A & 18/4-A for further auction; also directing the defendants/ JDs to deliver the possession of plot No.18/3-A to the plaintiff. Plaintiff averred that despite receipt of entire amount and confirmation of sale, the defendants /JDs did not hand over the complete possession of plot No.18/3-A measuring 182 sq. yards; nor refunded the balance amount of the remaining 85 sq. yards area to him.

3. Upon notice, defendants/JDs filed written statement opposing the claim of plaintiff, but admitted the factum of auction as well as confirmation of sale on 18.09.1971 in his favour . Also submitted that at the time of delivery of possession, it transpired that an area to the extent of 85 sq. yards of plot no. 18/4-A was wrongly disposed off during auction; and JD No.2 had already made a reference to the Deputy Secretary, Rehabilitation-cum-Settlement Commissioner, Haryana for setting aside the sale of excess area falling in plot No.18/4-A and to refund the proportionate amount to the plaintiff.

During the pendency of the suit, plaintiff died and his legal representatives were brought on record to pursue the matter, which was

ultimately decreed by then Sub-Judge 1st Class, Hisar vide judgment and decree dated 12.12.1980.

4. Aggrieved against the above judgment and decree, JDs preferred an appeal, but the same was dismissed by the then Additional District Judge, Hisar on 10.10.1981.

Since there was no further challenge, therefore, execution petition No 23-E, dated 18.10.1982 was filed by the appellants against JDs for seeking possession of Plot No.18/3-A, measuring 182 sq.yards. During pendency of the execution proceedings, they moved an application for seeking police help, which was allowed by executing court vide order dated 06.08.1983 and a letter dated 17.08.1983 was also written to SP, Hisar for providing police assistance. Thereafter on 22.10.1983, respondent No.1 was dispossessed from the house in dispute by the bailiff with police help at the instance of the appellants.

5. Aggrieved against the above action, respondent No.1 filed objections under Order 21, Rules 97-101 CPC *inter alia* submitting that he is a poor laborer and owner in possession of the house in dispute for the last 20 (twenty) years; he had gone away from the village for the last one month, but in his absence the lock of room was broken by the bailiff with police help and after removing all household articles, the possession of house in dispute was handed over to the appellants in an illegal manner, without any notice or service of summons; that he was neither a party to the civil suit, nor any decree had been passed against him; the appellants obtained possession on 22.10.1983 while misrepresenting the facts on the basis of a wrong site plan during execution proceedings as in the decree

dated 12.12.1980, no demarcation or dimension of the property was shown and the house in dispute is altogether a different property from the subject matter of the execution.

In response to the objections, appellants filed reply *inter alia* submitting that objector-respondent No.1 is having no title to the house in dispute; rather he was just holding over the same which was sold by JDs to the appellants, thus possession was rightly handed over to them while executing the decree.

6. On the basis of pleadings of both sides, learned executing court framed the following 5(five) issues:-

- “1. Whether the DHs were entitled to take possession from the Objector? OPDH.
2. Whether the objector was in possession of the disputed property as owner for the last more than 20 years? OPO.
3. Whether the objection petition is not maintainable? OPDH.
4. Whether the objector has no locus-standi to file the objection petition? OPDH.
5. Relief”.

Parties led oral as well as documentary evidence; after hearing both sides and taking into consideration the material available on record, learned executing court decided issues No.1 and 2 partly in favour of the objector-respondent No.1; whereas issues No.3 and 4 were fully decided in his favor. While considering issue No. 1 & 2, learned executing court came to the conclusion that constructed room measuring 17'x9' is situated within the abadi area of revenue estate of Village Barwala; respondent No.1 was held to be the owner of the same as it was not found to be the part of

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custodian property, thus his possession to that extent was restored, but dismissed the claim qua vacant area.

7. Dissatisfied with the above order of learned executing court, both sides preferred their respective appeals i.e. CMA No.131 and 136 of 1985. Appellate Court after analyzing the entire material on record, allowed the appeal filed by the respondent No.1; whereas dismissed the appeal of the present appellants vide common judgment dated 19.11.1985 and came to the conclusion that respondent No.1 shall be entitled to recover back the vacant area as well.

8. Hence, the present ESA.

9. It is contended by learned counsel for the appellants that courts below have committed grave error while passing the impugned order/ judgment restoring the possession in favour of respondent no.1 without there being his right, title or interest in the house in dispute. Further submitted that in view of the decree dated 12.12.1980, the area of plot No.18/3-A was found to be 182 sq. yards; the appellants were declared to be the owner of the same and mandatory injunction was also granted in their favor, thus the appellants were legally entitled for possession of the house in dispute. Lastly submitted that both courts have gone beyond the decree sought to be executed while observing that house in dispute is not the part of plot No.18/3-A and as such impugned orders are not legally sustainable.

10. On the other hand, learned counsel for respondent No.1 submitted that order dated 25.07.1985 modified by Appellate Court on 09.11.1985 are perfectly legal and do not require any interference by this

court; respondent No.1 was found to be owner in possession of the house in dispute for the last more than 20 years on the date of his dispossession and as such the possession was rightly restored by the courts below; he was neither a party to the decree sought to be executed; nor impleaded as respondent during execution proceedings, rather dispossessed without issuing any notice in a totally illegal and arbitrary manner. Lastly submitted that there was no site plan attached with the plaint; nor the boundaries of Plot No. 18/3-A were identifiable from the decree dated 12.12.1980, thus the same is un-executable against respondent No.1 being a total stranger to the subject matter of the decree.

11. Heard both sides and perused the records of the case carefully.

12. Undisputedly, the suit of the appellants was decreed by learned trial Court and respondent No.1 was not a party to the lis; rather there were only two defendants viz. (i) State of Haryana through Collector, Hisar; and (ii) Tehsildar, Sales, Hisar, who are not the party/respondents in the present 'ESA'. Records reveal that trial court while decreeing the suit of the appellants, *directed the defendants/JDs to deliver possession of plot No. 18/3-A considering its area to be 182 sq. yards. Although JDs challenged the judgment and decree dated 12.12.1980, but remained unsuccessful; however,* the first Appellate Court while dismissing their appeal on 10.10.1981 clarified that total area of the plot No. 18/3-A was not 182 sq. yards, rather it was only 97 sq.yards; but at the same time, held that appellants would be entitled to get the possession of area measuring 182 sq. yards from the defendants/JDs and they were directed to make up the deficiency by adjoining area of plot No.18/4-A. Paras No.10, 11 and 12

of judgment dated 10.10.1981 being material in this regard are recapitulated as under:-

“10. A perusal of the above observation would show that lower court came to the conclusion that there did not exist any plot named 18/4-A measuring 85 sq. yards and that area of plot No.18/3-A itself was 182 sq. yards and that defendants afterwards have with dishonest intention carved out a plot named as 18/4-A. In my opinion, there is no justification for the above conclusion. The mere fact that Des Raj Girdawar DW3 stated in the cross-examination that in the relevant register area of plot No.18/3-A was mentioned as 182 sq. yards will not show that the latter claim of the State that in fact area of this plot was 97 sq. yards is wrong. Indeed, initial error took place on account of the fact that area of the disputed plot in the relevant record was mentioned as 182 sq. yards. But later on it was found that the area of disputed plot was 97 sq. yards and that in order to make up deficiency of remaining 85 sq. yards the area of another plot 18/4-A will have to be included.

11. The question now arises whether the State can refuse to hand over possession of the area sold namely 182 sq. yards if it is found that adjacent plot namely 18/4-A also belongs to the State. In my opinion, the State is bound to give area measuring 182 sq. yards to the auction purchaser as bids were invited for plot measuring that area. It is not the case that the State is not owner of the above area and, therefore, impossibility of performance of contract may arise. The mere fact that plot No. 18/4-A has been given to the State under Rural package deal will not effect the legal liability of the State. In my opinion, State is under the liability to give the plot measuring 182 sq. yards to the plaintiff, because it is undisputed that the area sold to the plaintiff (since deceased) was 182 sq. yards.

12. In the light of above observation, I hold that finding of the lower Court is wrong; that plot No.18/3-A itself measures 182 sq. yards. I hold that plaintiff and after his death his successors are entitled to get possession of the area measuring 182 sq. yards and that State is bound to deliver possession of that area even if it has to make up deficiency in the area of plot No.18/3-A by joining with it the area comprising in plot No.18/4-A.”

In view of the above conclusion, the findings of trial court stood modified and it was held that area of plot no.-18/3-A was not 182 sq. yards; rather 97 sq. yards only. Concededly, from the very beginning, the appellants are in possession of the area measuring 97sq.yards of plot No.18/3-A; meaning thereby, they are already occupying the entire area of this plot. However, there is no doubt that appellants were entitled to seek possession of remaining 85 sq. yards from the JDs in terms of observations made in para 12 of judgment extracted here in above, but they did not choose to do so for the reasons best known to them; rather respondent no.1 was made the easy target.

There is nothing on record to indicate that any warrant of possession was issued against respondent no.1 by the executing court before passing the order dated 06.08.1983 for directing police help to break the lock of house in dispute and deliver the possession of the same to the appellants. It is discernable from record of executing court that 1st warrant of possession was issued against the JDs on 04.11.1982 (Ex.C-1) under Rule 35, Order 21 CPC regarding Plot No.18/3-A stated to be 182 sq. yards. Thereafter, on 05.11.1982 Sadhu Ram, bailiff reported (Ex.C-2) that a Kotha (room) has been constructed over this Plot and respondent

no.1 is in possession of the same; and when bailiff asked him to vacate, he flatly refused; rather bent upon to quarrel. Bailiff also reported that respondent No.1 after locking the room, went away. Apprehending the breach of peace, bailiff asked for police help. It transpires that an application dated 20.12.1982 was moved at the instance of the appellants for police help; which was allowed by the executing court on 06.08.1983 without issuing any notice or affording the opportunity of hearing to respondent no.1 and as a follow-up action, letter dated 17.08.1983 was also written to Superintendent of Police, Hisar. In the above letter, it was mentioned by the Presiding Officer that "judgment debtor has offered resistance" and "there is likelihood of breach of peace" without realizing that respondent no.1 was neither a judgment debtor; nor party to the decree sought to be executed and for reference, the letter reads as under:-

*"COURT OF SUB JUDGE IST CLASS-cum-CHIEF JUDL.
MAGISTRATE, HISSAR
MEMO NO. 1 DATED 17.08.1983
To*

*The Senior Superintendent of Police,
Hisar.*

*Subject:- Police help in Execution Case No.23-E of
1982. Bishan Dass s/o Chiman Lal
represented by his Smt. Kartaro Devi wd/o
Bishan Dass resident of Hisar vs. Haryana
state fixed for 17.09.1983.*

MEMO:

*"I have the honour to say that in the case cited as subject
above the judgment-debtor has offered resistance and
there is likelihood of breach of peace. I have gone through
the report of Bailiff and perused the statements of Shri
Sadhu Ram Bailiff and Parbhu Ram. I am of the opinion
that it is a fit case in which police assistance is necessary.*

As required by para 2 chapter 7, High Court Rules and Orders Vol. IV, police assistance for execution of warrant of possession may please be provided. Relevant papers are enclosed herewith for your perusal.

*Sd/-
Sub Judge Ist Class-cum-
Chief Judicial Magistrate, Hissar*

Thereafter again, a warrant of possession was issued against JDs on 05.10.1983 (Ex.DH 1) regarding Plot No.18/3-A, mentioning the area as 182 sq. yards and in pursuance thereof, possession of house in dispute was delivered to the appellants on 22.10.1983 by another bailiff i.e. Dwarka Dass (DW3) after breaking the lock of the room. In addition to making the report on reverse side of warrant regarding delivery of possession of the house in dispute, bailiff (DW-3) prepared his separate report of even date i.e. 22.10.1983 (Ex. DH 2) with regard to the recovery of household articles on the spot. During cross examination, DW3 admitted that name of objector/ respondent no.1 was not mentioned on the warrant of possession. He further stated that no stamp of the Court was affixed on site plan attached with the warrant of possession. This witness also stated that respondent no.1 was not available at the time of obtaining the possession of demised premises on 22.10.1983 and no notice was given to him when dispossession had taken place.

Another material witness i.e. Thakar Dass son of Bishan Dass while appearing as DW4, during his cross-examination acknowledged that respondent no.1 was not impleaded as party to the civil suit. He further stated that no copy of site plan was attached with the plaint and no notice

was sent to respondent no.1 at the time of his dispossession from the house in dispute.

13. This Court has also gone through the order dated 06.08.1983 and it nowhere indicates that there was any resistance or obstruction by respondent no.1 against the decree sought to be executed or that he had done anything wrong which could result into breach of peace in any manner. Undisputedly, warrant of possession was issued against the JDs only and not against respondent no.1. Letter dated 17.08.1983 also talks about the resistance by the judgment debtor; but this is an admitted position that respondent no.1 was neither judgment debtor; nor a party to the execution proceedings; rather he was a complete stranger to the decree sought to be executed, therefore, it seems that executing court while making reference to Para 2, Chapter 7, High Court Rules & Orders Vol. IV, did not realize this aspect of the matter before proceeding under Rule 35 of Order 21 CPC for providing police help to the appellants.

14. Learned executing court while partly accepting the objections of respondent No.1, came to the conclusion that constructed room measuring 19'x7' was situated within the abadi area of Village Barwala and he was found to be owner in possession of the same for the last more than 20 years on the date of his dispossession i.e. 22.10.1983; and he was held entitled to retain the possession to that extent, but rejected his claim qua the vacant area as it was opined to be the part of plot No.18/4-A.

It is necessary to observe here that there is neither any pleadings; nor material on record to the effect that house in dispute or vacant area is part of plot no.18/4-A. Even as per the report of bailiff also,

respondent No.1 had constructed a Kotha (room) over plot No. 18/3-A and while appearing as DW3, he (bailiff) did not utter even a single word that respondent No.1 had constructed the Kotha (room) over plot No.18/4-A. Thus, the conclusion of the executing court that open space was the part of plot No.18/4-A, had been recorded only on the basis of conjectures and created altogether a new case thereby depriving the respondent no.1 of his lawful claim. Since there was neither any plea; nor evidence by the appellants to the effect that respondent no.1 had constructed the house in dispute over plot no. 18/4-A. Apropos, the conclusion of executing court to that extent was rightly set aside by the Appellate Court and this Court fully agrees with the same. As a result thereof, it is held that house in dispute has no concern with plot No.18/4-A.

15. Also noteworthy that plaintiff/appellants did not attach any site plan of plot no.18/3-A with the plaint. Even from the perusal of decree dated 12.12.1980 also the boundaries/ dimension of plot no.18/3-A are not discernable. Appellate Court, while passing the impugned judgment dated 19.11.1985 also came to the conclusion that neither boundaries; nor dimension of plot No.18/3-A were depicted in the decree sought to be executed; rather the same is totally vague and the relevant extract of the observations made in para 6 of the impugned judgment read as under:-

“When repeatedly asked by me from the counsel for the DHs-appellants as to particularize and specify the property in respect of which the decree had been passed by the learned trial Court and what were its boundaries/ dimension, he either evaded the reply to my query or escaped the prison of words. The reason for it was quite apparent as there was a vital omission on the part of the

DHs. They did not file the site plan in the suit or give the particulars of the suit property by giving its boundaries and dimensions, in the absence of which it cannot be said that in regard to which property the Court passed the decree.”

Although, learned counsel for the appellants tried to justify the area of plot No. 18/3-A as 182 sq. yards on the basis of site plan (Ex.D6) produced by JDs before learned trial court during civil suit, but according to this document also the area of plot No. 18/3-A does not exceed 97 sq. yards and the observations made learned Appellate Court in this regard, are as under:-

“In the suit filed is the site plan Ex.D6 pertaining to plot No.18/3-A, the dimensions of which as mentioned therein are 31+21 feet North, 18’ East, 19’ West and 40’ South, the area of which comes to 82 sq. yards approx. and not 1638 sq. ft. / 182 sq. yards.”

For complete satisfaction of the appellants, this Court has also undertaken the exercise to exactly convert the area of site plan (Ex.D6) into sq. yards and that would be as under:-

North = 52 (31’+ 21’)
East = 18’
West = 19’
South = 40’
Area in feet =
 $52' + 40' = 92' \div 2 = 46'$
 $18' + 19' = 37' \div 2 = 18.5'$
Total-46’X18.5’ = 851’
Area in Sq. yards =
 $851' \div 9 = 94.56 \text{ sq.yards.}$

In view of the above, undoubtedly, there is slight variation from the calculation made by the Appellate Court, but in any case, the area of site plan (Ex.D6) does not exceed 97 sq. yards and that was also the final finding of fact recorded by the then learned Additional District Judge while passing the judgment dated 10.10.1981.

Since the area of plot No.18/3-A has not been found to be 182 sq. yards, rather it is only 97 sq. yards and as discussed above, from the very beginning appellants are in possession of area measuring 97 sq. yards of this plot, therefore, by no stretch of imagination, it could be construed that respondent No.1 had constructed any Kotha (room) in plot No. 18/3-A; rather house in dispute is entirely distinct property having no relevance with the decree sought to be executed.

16. It seems that learned executing court while issuing the warrant of possession did not verify that area of plot No.18/3-A was not 182 sq. yards; rather found to be only 97 sq.yards. Even the bailiff also did not care to ascertain the factual position on the spot and upon breaking the lock of the room handed over the possession of house in dispute to the appellants in an illegal manner under a judicial fiat. Unfortunately, the poor man was brought on road without any fault and that too against all cannons of rule of law being a total stranger to the decree dated 12.12.1980.

It is well known *common law maxim* that “the house of everyone is to him as his Castle and fortress as well for his defence against injury and violence for his response”; Sir Edward Cock (vide Semayne's case, 77 Eng. Report 194).

17. It is worth to mention here that respondent no.1 was dispossessed on the basis of warrants of possession issued against the JDs under Rule 35 of Order 21. Concededly, there was no warrant of possession issued against respondent No.1. Admittedly, he was not a party to the decree sought to be executed; rather complete stranger to it. Under sub-rule 3 of Rule 35 (ibid), executing court is empowered to put the decree holder in possession of building or enclosure after removing the lock in case the person in possession was “bound by the decree” and not against a “stranger”. Legally speaking, in case of any resistance or obstruction against the execution of the decree by a stranger, the right course for the decree holder has been provided under Rules 97, 98 & 101 of Order 21 CPC and which are extracted as under:-

“97. "Resistance or obstruction to possession of immovable property"

- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.*
- (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”*

98 "Orders after adjudication"

- (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule(2)-*
 - (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or*

(b) pass such other order as, in the circumstances of the case, it may deem fit.

- (2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.*

101 "Question to be determined"

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

Perusal of Rule 97 clearly indicates that where decree holder or the purchaser of the property sold in execution of a decree is resisted or obstructed by any person from obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction and the Court shall proceed to adjudicate the same in

accordance with the provisions contained under Rules 98 and 101 of Order 21 CPC.

Rule 98 talks about the orders that can be passed after adjudication of the application filed under Rule 97. Where upon determination, the Court is satisfied that resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Rule 101 inter-alia says that all questions, including questions relating to right, title or interest in the property, arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application shall be determined by the Court dealing with the application and “not by a separate suit”.

18. In the present case, there was no adjudication of any such application in terms of Rules 97, 98 & 101(ibid) before dispossession of respondent no.1 on 22.10.1983; rather without adverting to the above legal provisions, executing court proceeded in an absolutely erroneous manner. There is not even a whisper in the order dated 06.08.1983 to the effect that respondent No.1 had created any resistance or obstruction against the

execution of decree dated 12.12.1980; yet, such a drastic step was taken against him which cannot be appreciated.

19. Also necessary to mention here that Rules 99 & 100 of order XXI deal with the restoration of the possession of a stranger who has been dispossessed by the decree holder or purchaser and which are as under:-

“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.*

100 "Order to be passed upon application complaining of dispossession"

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application ; or*
- (b) pass such other order as, in the circumstances of the case, it may decree fit.”*

Perusal of Rule 99 makes it apparently clear that any person; other than judgment debtor, who is dispossessed of immovable property by the holder of a decree or by the purchaser during execution, he may make

an application to the court complaining of such dispossession and the court is under obligation to adjudicate the application.

Still further, Rule 100 (ibid) inter-alia says that the court may allow the application and direct that applicant be put into possession of the property.

20. From the record of the case respondent No.1 has been found to be owner in possession of the house in dispute for the last more than 20 years prior to 22.10.1983 and he was wrongly dispossessed at the instance of appellants on that date with police help. On repeated asking, learned counsel for the appellants is not able to show from the record of the case that respondent No.1 had raised any construction or occupied the open space from plot No.18/3-A or 18/4-A after passing of the decree dated 12.12.1980 till his dispossession on 22.10.1983, yet he was made a scapegoat without any reason.

Argumentum a fortiori, in view of the provisions of Section 110 of the Indian Evidence Act, 1872, “when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.

Above all, Article 300-A of the Constitution of India says that “no person shall be deprived of his property save by authority of law”.

In view of above, the irresistible conclusion would be as under:-

- (i) On the date of dispossession i.e. 22.10.1983, respondent no.1 was owner in possession of the house in dispute and which is found to be neither the part of plot no.18/3-A; nor 18/4-A.

- (ii) Respondent no.1 had been dispossessed on the basis of order dated 06.08.1983, which was passed *de hors* the provisions of law discussed above, but the illegality is rectified by the courts below while restoring his possession and this court affirms the same.

It is necessary to observe here that respondent No.1 is in possession of the house in dispute and this fact was duly noticed at the time of considering the stay application of the appellants vide order dated 09.01.1986, which reads as under:-

“The learned counsel for respondent No.1 states that possession of the property in dispute has already been taken by respondent No.1. The application for staying the operation of the impugned order has become infructuous and it is dismissed as such.”

In view of the above, this Court has no option except to dismiss the present execution second appeal.

21. Ordered accordingly.

22. Needless to say that dismissal of this appeal would not be a bar for the appellants to pursue their remedy against the JDs, in accordance with law.

March 03, 2020
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no