

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 1196 of 2020 (O&M)
Date of decision : July 22, 2020

Jasbir Kaur

....Petitioner

versus

Joginder Kaur and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Abhinav Gupta, Advocate, for the petitioner

Mr. Mohan Singla, Advocate, for respondent no. 1

Fateh Deep Singh, J. (Oral)

CM No. 7280-81.CII of 2020

The matter has been taken up through Video-conferencing on account of outbreak of pandemic COVID-19.

Both these applications are by way of prayer for placing on record site plan of land, cross-examinations of plaintiff's witnesses and daily diary report Annexures P/8 to P/12 as well as for placing Aks Shijra in respect of land in dispute moved by the applicants.

The trial court by the impugned order had disposed of third party objections and the documents which were already in existence and were part of the record were duly considered. The present petition is by way of limited prayer as to illegality and validity of the impugned findings and at this juncture nothing new needs to be added and this Court intends to rely on what was there before the court below at the time of passing of the impugned order. Thus, both these applications are not sustainable and stand dismissed as such.

CR No. 1196 of 2020

Initially in a civil suit titled Joginder Kaur vs Harpal Singh, Civil Suit No. CS-316 of 2015, the court of learned Civil Judge (Junior Division), Tohana passed judgment decree dated 5.5.2017 decreeing suit of the plaintiff. It is during the course of proceedings, execution petition was filed by Joginder Kaur decree holder against Harpal Singh judgment debtor in which third party objections were filed by one Jasbir Kaur wife of Harpal Singh and the court vide impugned findings dated 3.2.2020 dismissed the same summarily and issued warrants of possession in compliance of the judgment decree passed in favour of the decree holder. It is against these very findings the unsuccessful objector had come up in this revision.

Heard Mr. Abhinav Gupta, counsel for the petitioner and Mr. Mohan Singla, counsel for the respondent no. 1 and perused the records.

It is claimed that Nirmal Kaur wife of Narinder Singh was co-sharer in land khewat No. 95 measuring 16 kanal 0 marla and was in exclusive possession comprising khasra No. 25//19(8 kanals 0 marla), 20 (8 kanals 0 marla) and to facilitate ingress and outgress left three karams wide passage for approach to their Dhani (dwelling unit). Above said Nirmal Kaur sold the land subsequently to Veerpal Kaur and others and in between the objector Jasbir Kaur exchanged land with Veerpal Kaur. The main grouse of the revisionist Jasbir Kaur is that without framing issues on the objections and calling for evidence, the court by the impugned findings have summarily dismissed the same.

Appreciating the submissions of the counsel for the two sides, the decree is merely for restraining the other side from creating hindrance in the existing passage and for removal of the encroachment created thereon. The claim of the revisionist that they are living in the dwelling unit existing on the alleged Rasta and if the decree is given effect to an irreparable loss and injury shall occur and there are allegations against the revenue officials for making wrong entries. Be so as it may, if the petitioner has any grouse she

is well within her legal right to invoke jurisdiction of the civil court by a separate suit. Since parties are related to each other living in the same very vicinity are aware of the proceedings being carried on between the litigants over the passage when the judgment decree by the learned Sub Judge and first appellate court had gone in favour of the decree holder and in regular second appeal, the judgment debtor failed to secure any stay order, apparently it appears that a device has sought to be created to put hurdles in the way of implementation of the judgment decree in favour of the decree holders. It is not in any manner assailed that to facilitate rectification of the record, the objector revisionist had filed a civil suit No. 16 of 2019 titled Harpal Singh etc. vs Veerpal Kaur which is pending in the court of learned Civil Judge (Junior Division), Tohana. Even otherwise, if we go by the own admission of the counsel for the petitioner that the parties are co-sharers, then a co-sharer can on its behalf or on behalf of other co-sharers lay claim to their joint stand and thus by that analogy the revisionist cannot escape from the claim that their rights were not duly protected in the trial court. Much water has since then flown down the bridge and the claim that Harpal Singh JD has never filed any affidavit dated 3.11.2002 is a matter which cannot be gone into in the execution

proceedings. The court below in the impugned findings considering all aspects of the case of the parties even in third party objections has held that the present objections out of which the instant revision has arisen were frivolous to delay due execution of the judgment decree. Even otherwise the location of the dwelling unit and the Rasta is on different tract of land which is depicted by Kh. Nos. 25//11/2/1 and 25/11/2 and the objector as per her own stand is in possession of killa No. 25/19/2 (7 kanals 11 marlas) and 20/2 (7 kanals 8 marlas). The court below had given a well reasoned finding illustrating this situation and passing a categorical finding that the house which the objector claims is situated on 25//11/2/1 and the Rasta in question is in killa no. 25//11/2/2 and that the Rapat by the revenue authorities was entered in the presence of the husband of the objector and others and which fact is under challenge in a different civil suit which is still pending and therefore, cannot have any adverse impact at this juncture. Since the questions that have been sought to be raised by the objector are not relevant between the parties to this lis, the court was not bound to frame issues on the third party objections and thus protract unnecessarily the trial of the execution. More-so the question of entry in the Rapat is subject matter of another suit which would have been too preposterous for

executing court to have commented upon the same while transgressing the jurisdiction of the civil court which is already seized of that matter. Since to the mind of this Court, a bare perusal of the impugned findings shows that the objections are totally frivolous and vexatious with a definite purpose to delay the execution proceedings and thus have been rightly dismissed summarily. There appears to be no illegality or perversity in the impugned findings and therefore, the same are upheld.

The present revision petition stands dismissed.

July 22, 2020
'tiwana'

(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>