

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

(1) ESA-6 of 2021 (O&M)
Pyare Lal and others
...Appellants
Versus

Mahender Kumar Jaipuria and others
...Respondents

(2) ESA-7 of 2021 (O&M)
Pyare Lal and others
...Appellants
Versus

Mahender Kumar Jaipuria and others
...Respondents

(3) ESA-8 of 2021 (O&M)
Pyare Lal and others
...Appellants
Versus

Mahender Kumar Jaipuria and others
...Respondents

(4) ESA-9 of 2021 (O&M)
Pyare Lal and others
...Appellants
Versus

Mahender Kumar Jaipuria and others
...Respondents

**Reserved on : 25.11.2021
Date of pronouncement: 01.12.2021**

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Munish Gupta, Advocate for the appellants.

Mr. Saurabh Goel, Advocate for respondent No.1.

H.S. MADAAN, J.

1. This order of mine shall dispose of aforementioned appeals, four in number, as the issue involved therein is common.

2. Briefly stated facts of the case, as can be gathered from the record are that, Mahender Kumar Jaipuria son of Late Sh. Bhikhranj Jaipuria, resident of 35, Chandrika Nagar Colony, Sigra, Varanasi along with 09 others, had brought four suits for grant of permanent injunction against defendants Gram Panchayat, Loharu, Tehsil Loharu, District Bhiwani through its Sarpanch, Chiranjee son of Ram Chander and Rajender son of Parshadi Lal, all residents of Loharu, Tehsil Loharu, District Bhiwani with a prayer that defendants be restrained from interfering into peaceful possession of the plaintiffs over plots No.126 to 129, situated within Municipal Area, Loharu, each of the four plots having dimensions of 150 feet by 100 feet, fully detailed in headnote of the complaints and from causing any hindrance in the construction work; in the said suits, the plaintiffs claimed that they are successors-in-interest of Sh. Bhikhranj Jaipuria, who was earlier owner in possession of this plot on the basis of Kabala/Patta registered at serial Nos.557, 558, 559 etc. dated 04.04.1942 with the office of the then Dewan of Loharu State executed by Sardar Akram Ali Khan under the orders of the then Nawab of Loharu State; that defendants had no right or title therein but despite that, they had been threatening to interfere in peaceful possession of the plaintiffs over the suit land and to obstruct the plaintiffs from raising construction therein as well as in the adjoining land belonging to the plaintiffs; when

the defendants persisted in holding out such threats, then the plaintiffs had knocked at the door of the Civil Court at Loharu by way of filing the suit in question.

3. On being given notice, the defendants put in appearance and contested the suits; defendant No.1-Gram Panchayat besides raising several legal objections, claimed ownership of the plots in question, contending that the plaintiffs have no concern therewith, whereas, defendants No.2 and 3 also took various legal objections, submitting that they had no intention to encroach upon the plot in question, though, they were ready to purchase the same if the plaintiffs so desired.

4. Issues on merits were framed; the parties were afforded adequate opportunities to lead evidence in support of their respective claims; after hearing arguments, trial Court of Addl. Civil Judge (Sr. Divn.) Loharu, vide judgment dated 12.11.2005 decreed the suits; in that way, restraining the defendants from interfering in peaceful possession of the plaintiffs over the plot in question or to create any type of hindrance in the construction work.

5. Feeling aggrieved by the said judgments and decrees, Gram Panchayat-Loharu had preferred appeals before District Judge, Bhiwani. The said appeals were dismissed by learned District Judge, Bhiwani, vide judgments dated 06.12.2006. In that way, the judgments and decrees passed by the trial Court were upheld.

6. Still feeling dissatisfied, Gram Panchayat, Loharu had knocked at the door of this Court by way of filing Regular Second

Appeals. Those appeals were also dismissed.

7. Thereafter, Municipal Committee, Loharu started litigation regarding this very property by filing a civil suit No.94 of 2009 against Jagdish Kumar and others, successors-in-interest of Sh. Bhikhranj Jaipuria, seeking declaration that plaintiff is owner in possession of the property in question and the defendants in the said suit have no right, title or interest therewith and as a consequential relief, restraining the defendants from taking forcible possession of the said property from the plaintiff-Municipal Committee, Loharu.

8. On getting notice, defendants No.1, 2, 8 to 17 had appeared and offered a contest. Issues on merits were framed. However, the plaintiff failed to bring any evidence on record. The trial Court of Addl. Civil Judge (Sr. Divn.), Loharu, vide judgment and decree dated 26.02.2010 dismissed the suit under Order 17 Rule 3 CPC. Municipal Committee, Loharu challenged that judgment and decree in appeal before District Judge, Bhiwani. The said appeal was assigned to Addl. District Judge-III, Bhiwani, who vide judgment dated 09.11.2010 dismissed the same with costs.

9. Thereafter, Municipal Committee, Loharu then came to this Court by way of filing Regular Second Appeal No.806 of 2012. However, vide order dated 06.10.2016, the appeal was accepted; the judgments and decrees passed by the Courts below were set aside and the matter was remitted back to the trial Court with a direction that plaintiff shall submit list of witnesses and seek dasti summons if necessary. The trial Court

shall afford three effective opportunities to the parties to conclude the evidence and dispose of the suit as expeditiously as possible and preferably within a period of 10 months. However, the said suit was withdrawn by the plaintiff Municipal Committee on 22.02.2017 and it was dismissed as such.

10. It may be mentioned here that 03 others appeals filed by Gram Panchayat, Loharu bearing Nos. RSA-1289, 1483 and 2324 of 2007 were dismissed, vide order dated 19.12.2007. The suit filed by Municipal Committee, Loharu was also dismissed by Addl. Civil Judge (Sr. Divn.) on 26.02.2010.

11. The objectors had filed a civil suit No.78 of 2009 claiming that they are having shops in khasra No.271 within boundary of Municipal Committee, Loharu. The said suit filed was dismissed.

12. Mahender Kumar and others had filed an execution application in which Municipal Committee, Loharu appeared and filed objections. The objections were dismissed by Civil Judge (Sr. Divn.) Bhiwani, vide order dated 05.09.2011. Suffice to say the attempts by Gram Panchayat, Loharu earlier and Municipal Committee, Loharu later on to claim ownership and possession of the suit property as against Mahender Kumar Jaipuria etc., proved futile. Thereafter, third party objections were filed by the present appellants, contending that that decree holder had no interest in the land, which had been in possession of the objectors, where they are doing their work; that the objectors were not a party to the litigation between Mahender Kumar Jaipuria and others on

one side and Gram Panchayat/Municipal Committee, Loharu on other side, therefore, decree(s) cannot be executed against them. The objectors disputed the identity of the property. They referred to report of Local Commissioner dated 16.07.2010 that spots in the disputed land mentioned in Kabala could not be identified in any manner. The objectors stated that they are in possession of land bearing Khasra Nos. 734 and 735; the possession of objectors is in their own capacity and the plaintiffs/decreed holders cannot dispossess them in any manner because Municipal Committee is alleging that the property is situated in Khasra No. 271 whereas according to the objectors, the property is bearing khasra Nos. 734 and 735.

13. The objections were contested on behalf of the plaintiffs/decreed holders. The objections were disposed of by Addl. Civil Judge (Sr. Divn.) Loharu, vide order dated 16.08.2013. The operative part of the order is being reproduced for ready reference:-

“7. This Court has heard the arguments of learned counsel for both the sides and after hearing arguments, so far as the applications in hand are concerned, the facts mentioned therein clearly reveals that the present objectors, the facts, mentioned therein clearly reveals that the present objectors were parties to the suit no. 78 of 2009 which was decided on 13.01.2011 and the same was filed by them on the basis of the fact that they are occupying the shops comprised in Khasra no. 271 belonging to Municipal Committee, Loharu against the plaintiffs, who are the decreed holder in the present matter and the said suit was dismissed. Here so far as the application filed by the objectors to the effect that on the basis of the judgment and decree dated 12.11.2005, the petitioners may not be

disposed as the suit property is not in existence and at the same time by way application dated 06.10.2012 and the pleas of the petitioners demarcation of the land of Khasra no. 734 and 735 is also not maintainable, because it is their case to prove this fact that where Khasra no. 734 and 735 are situated. Here so far as the suit property belonging to the judgment and decree dated 12.11.2005 is concerned in that regard while deciding the objections on 5.09.2011, the court learned Civil Judge (Senior Division) Bhiwani, has specifically given its finding as to the fact that the suit property claimed by judgment debtors, which in fact includes suit property, was filed against Gram Panchayat, Loharu, which later on merged into Municipal Committee Loharu. It shows that now whatever is being claimed by the present petitioner is in fact the same rights regarding which the matter has already been heard and finally decided by the Court of competent jurisdiction in the proceedings and now there is no logic to decide again and again the same issued between the parties just due to the fact that at every time objections in the form of petitions are again and again being filed by the same persons either by themselves or through their legal heirs. This Court is of the view that all this being done just with a view of defeat the execution of the judgment and decree dated 12.11.2005. It is also a settled law that Executing Court under no circumstances can sit in appeal over judgment and decree passed by Court of competent jurisdiction. At the same time, it is also settled law that where the objectors are not claiming themselves to be the legal heirs of judgment debtors, in that case they cannot file any kind of objections, rather they are left with only remedy to file a Civil suit, and there is no dispute as to the fact that the present petition filed by the petitioners in the form of objections cannot be treated as a separate suit. From the point of view also, the present petitioner have no right whatsoever to challenge the

execution of decree, in any manner whatsoever. This court is also of the view that they have got no right to allege that fact that the execution is being proceeded with just to execute the decree which as per the claim of the petitioners is obtained by way of fraud, misrepresentation and is not binding on their rights. In the present set of circumstances, since it is nowhere disputed that the present petitioners are claiming to be in possession only through Municipality, therefore, they have no right to retain the possession when the suit filed by the Municipality (Gram Panchayat) against the present decree holder, was dismissed, therefore, now the same matter cannot be again and again agitated. In these circumstances, the applications in question are dismissed and the ex-parte status-quo order passed by the court of learned Civil Judge (Senior Division), Bhiwani on 5.10.2012, is revoked and it is ordered the execution of decree be proceeded further in view of the order dated 5.9.2011, passed by the Court of learned Civil Judge (Senior Division) Bhiwani. The Station House Officer, Loharu and the higher police authorities (if SHO PS Loharu so requires and applies for assistance of more police force, as per the factual position), are directed to provide assistance of every kind, without any delay, whenever an application in this regard is moved by the decree holder for getting executed the decree dated 12.11.2005, against the debtors for erecting fencing wires and the present petitioners, objectors, Municipal Committee and the persons claiming through Municipal Committee, are advised not to create any kind of resistance unnecessary in the execution of the decree. It is also made clear that all the expenses incurred for making security arrangements and erection of fencing wires etc. are to be born by the decree holders on the asking, as per the requirements of the police officials. It is also clear that in case some resistance is being caused in executing the decree by any party to the

present execution petition i.e. the judgment debtors, objectors i.e. Municipality or the persons claiming through Municipality, the police authorities are at liberty to put them under arrest and be produced before the Court, until the decree is executed, in terms of order dated 5.09.2011, passed by learned Civil Judge (Senior Division), Bhiwani. The case laws referred by both the parties are distinguishable and are not applicable to the facts and circumstances of the present case.

8. In view of the above discussions, all the above mentioned applications stands disposed off accordingly.”

14. Thereafter, Mahender Kumar Jaipuria etc., had filed an execution petition against Rajender Kumar and others, contending that despite plaintiffs being successful in litigation against Gram Panchayat, Loharu and others and objections of some of the respondents having been dismissed in the previous execution petitions, the respondent have been violating the judgment and decree repeatedly and have kept their wooden khokhas in the suit land, to which they have no right and in that way, they are interfering in work of fencing of the plots by the decree holders and they be directed not to do so and to remove their wooden khokhas. Some of the respondents resisted the prayer, filing objections, which were opposed by the plaintiffs/decreed holders. Some were disposed of by Addl. Civil Judge (Sr. Divn.) Loharu, vide impugned order dated 15.05.2019. The operative part of the order is being reproduced for ready reference:-

“8. Mainly, it is the case of the objectors that there is no property bearing plot no.129 in the whole of Loharu and that the plot bearing no.129 do not exist at the spot and that it is the objectors who are doing work of selling vegetables

on the land bearing khasra no.734 and 735 and that in the guise of present execution petition decree-holder wants to dispossess the objectors from the said khasra numbers and that in these circumstances it is necessary to find out the exact location of plot bearing no.129 i.e. the suit property for which purpose demarcation of khasra no.734 and 735 is necessary.

9. It is pertinent to mention here that the present suit of permanent injunction was decreed on 12.11.2005 by the learned Predecessor of this Court. Earlier also, the execution regarding the said civil suit was filed on 23.12.2008 by the decree-holder. The said execution file has been summoned by the Court during the pendency of present execution petition. Perusal of the said file shows that vide order dated 4.5.2010, an application for appointment of Local Commissioner moved by the objectors/JDs was allowed and Tehsildar Loharu was appointed as Local Commissioner to demarcate the khasra no.271 and to find out the location of property mentioned in kabala bearing no.558 dated 4.4.1942 i.e. the suit property. The Local Commissioner submitted his report on 19.4.2010 and thereafter objections qua the report of Local Commissioner were invited. Thereafter, the matter was transferred to the Court of learned Civil Judge (Sr. Divn.), Bhiwani. After hearing the arguments, the objections filed by the Municipal Committee and the objectors were dismissed vide order dated 5.9.2011 holding that there is no anomaly regarding the exact location of the plot bearing no.126 to 129. Thus, bare perusal of the order dated 5.9.2011 shows that the Learned Civil Judge (Sr. Divn.) had already identified the suit property and confirmed the exact location of the suit property vide the said order.

10. Further perusal of the execution petition dated 23.12.2008 shows that thereafter the same was transferred to the learned Predecessor of this Court on 6.10.2012. Before the learned Predecessor of this Court also, same objection were taken by the objectors. Further, the application for demarcation of the khasra no.734 and 735 was also moved before the learned Predecessor of this Court and the learned Predecessor of this Court vide order dated 16.8.2013 dismissed the objections as well as the application for demarcation of the land of khasra no.734 and 735 while passing a detailed order.

11. Now, since the exact location of the khasra no.126 to 129 and the application for demarcation of the land situated in khasra no.734 and 735 had already been dismissed by the earlier Courts, therefore, there is no point in again going into the objections of the objectors and deciding the application for demarcation of khasra no.734 and 735. There is no logic to decide again and again the same issues between the parties just due to the fact that every time objections in the form of petition and application are being filed by the same person either by themselves or through some other person again and again when the matter has already been heard and finally decided by the Court of competent jurisdiction. The Court is of the view that all this is being done just with a view to defeat the execution of the decree dated 12.11.2005 and to deprive the decree-holder from realizing the fruits of said decree. In these circumstances, the objections taken by the objectors and the application for demarcation are **dismissed** being devoid of merit. Since admittedly, objectors are in possession of the disputed land by way of running the business of selling vegetables, therefore, they are directed to vacate the

disputed land with immediate effect. Further, they are directed not to interfere into the work of fencing over the disputed property. The Station House Officer, Loharu and the higher police authorities (if SHO PS Loharu so requires and applies for assistance of more police force, as per the factual position), are directed to provide assistance of every kind, without any delay, when ever an application in this regard is moved by the decree-holder for getting executed the decree dated 12.11.2005, against the judgment debtors for erecting fencing wires and the present objectors, Municipal Committee and the persons claiming through Municipal Committee are advised not to create any obstacle in the execution. It is also made clear that all the expenses incurred for making security arrangements and erection of fencing wires etc. are to be born by the decree-holder on the asking, as per the requirements of the police officials. It is also made clear that in case some resistance is being caused in executing the decree by any party to the present execution petition i.e. the judgment debtors, objectors i.e. Municipality or the persons claiming through Municipality, the police authorities are at liberty to put them under arrest and be produced before the Court, until the decree is executed, in terms of order dated 5.9.2011, passed by the learned Civil Judge (Senior Division), Bhiwani. The Bailiff of this Court is directed to assist the decree-holder for implementation of the directions for erection of fencing wires over the suit property, with the help of police authority. Report in this regard is awaited for 04.07.2019.”

15. Feeling aggrieved, respondents Pyare Lal and others had filed an appeal before District Judge, Bhiwani, which was assigned to Addl. District Judge, Bhiwani, who vide judgment dated 15.02.2021,

dismissed the same, upholding the order passed by the Executing Court.

16. Now feeling aggrieved, the objectors have approached this Court by way of filing appeals, which are being contested by the plaintiffs/decreed holders.

17. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeals. The objectors are not shown to have any right or title in the suit property. They claimed that the disputed property belonging to Municipal Committee, Loharu bears khasra No.271, of which the JDs/Objectors are in possession with which the plaintiffs/decreed holders have no concern. However, this version was not accepted by the Courts below, rather the JDs were found to be in wrongful possession of the property belonging to the plaintiffs/decreed holders. There is nothing to show that they are in established possession of the suit property. Finding the land to be vacant if some of the objectors have started using it for the purpose of selling vegetables, fruits etc., by placing their wooden khokhas therein, that does not bestow any valuable right upon them and they cannot insist that they cannot be ejected except in due course of law, rather, they themselves are wrong doers being trespassers. Since they are on wrong side of the law, they cannot ask for equity, stating that the possession be taken from them in accordance with law only. According to the objectors, they are in possession of disputed property on *Teh Bajari* but no such record in that regard has been proved in evidence. Even otherwise, if Municipal Committee does not have any right or title with the property in question,

it cannot possibly give it on rent/license (*teh bajari*) to the objectors and they have no right to remain in possession of any part of the property in question.

18. As far as prayer made by learned counsel for the appellants for demarcation of the property is concerned, the appellants having no right or title in the property have no locus standi to ask for the same. I do not find any illegality or infirmity with the impugned judgments. The impugned orders passed by the Courts below are quite detailed, well reasoned passed by properly appreciating the factual and legal position. They do not suffer from any element of arbitrariness or perversity. There is no reason to interfere with such orders in appeals. The appeals are found to be without merit and are dismissed accordingly.

01.12.2021
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No