

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

212

CR-2415-2020

Date of decision: 26.02.2021

SOM PARKASH

...Petitioner

Versus

OM PARKASH

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Puneet K. Bansal, Advocate for the petitioner.

Mr. Pardeep Bajaj, Advocate for the respondents.

ANIL KSHETARPAL, J. (Oral)

The decree holder has filed this revision petition against the order passed by the Executing Court directing him to pay an amount of Rs.9,54,185/- to the judgment debtor before he gets the possession.

The decree holder and the judgment debtor are brothers. The petitioner-decree holder filed a suit for possession of half share of the portion of the house having an area of 4 marla comprised in khasra No.831 (0-4). The suit after contest was decreed on 10.02.2016 and concluding part of the judgment reads as under:-

In view of my findings on the above said issues the suit of the plaintiff stand decreed to the effect that the plaintiff is entitled for the possession of half share as sought by him, of the house having an area of 4 marlas comprised in khasra No.831 (0-4) but at the same time it is also held that at the time of receiving the possession of suit property, he will make the payment of expenses of construction spent by defendant on said portion which will be assessed by a Civil Engineer. Parties will bear their own costs. Decree sheet by prepared accordingly. File be consigned to the record room, Ferozepur.

It is not in dispute that when the defendant filed his written statement while contesting the suit, he disclosed that he has spent an amount of Rs.4.5 lakhs on construction.

After the decree has become final. When the plaintiff filed execution, the judgment debtor filed his objections. The Court had

appointed a local commissioner who visited the spot and assessed the current value of the construction to be at Rs.9,54,185/- that is how the order in question has been passed.

Learned counsel for the petitioner submits that the petitioner cannot be burdened with the current value of the construction as also for the further construction which was carried out by the respondent during the pendency of the suit.

Learned counsel for the respondent contends that there was no stay on the construction and therefore, the judgment debtor continued with the construction.

After having considered submissions of learned counsels, it is clear that the Executing Court has assessed the current cost of the construction. Still further, it is the stand of the judgment debtor in the written statement that he has spent an amount of Rs.4.5 lakhs. The respondent-judgment debtor cannot claim benefit over his own wrong. Once the suit for possession had been filed, there was no occasion for the respondent to continue with the construction. If he has done so, then the opposite party cannot be made to suffer. The petitioner-decree holder has already been burdened with a sum of Rs.4.5 lakhs, the cost of construction as per the written statement was filed. Still further, the operative part of judgment provides that only cost of construction is payable and not the current value of the construction. In view thereof, the order under challenge is modified. The petitioner would be entitled to take possession on payment of Rs.4.5 lakhs to the respondent within a period of two months. With these observations, the revision petition is allowed.

26.02.2021

(ANIL KSHETARPAL)
JUDGE

ashok

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No