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

CR-2788-2021 (O&M)

Date of decision : 23.11.2021

Kamaljit Singh

.....Petitioner(s)

Versus

Tarsem Singh and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. H.S. Batth, Advocate
for the petitioner.

ALKA SARIN, J.

The present Civil Revision Petition under Article 227 of the Constitution of India has been filed impugning the order dated 08.10.2021 (Annexure P-6) passed by the Court of Additional Civil Judge (Senior Division), Moga dismissing the third party objections filed by the petitioner herein.

Before advertng to the merits of the case, a few facts relevant to the present *lis* are required to be noted:

A suit was filed by respondent No.1 (decree holder) for possession of the property bearing Khasra No.720 (1-0) Khewat No.1818/1748, Khatauni No.2106, measuring 1 kanal as mentioned in the jamabandi for the year 2007-08 situated at village Kokari Kalan Sumali,

District Moga. The said suit was contested by the father of the petitioner, namely, Bhagwan Singh (present respondent No.2), raising the defence in the written statement that he along with his brothers Gurdev Singh and Gurcharan Singh are owner in possession of the suit property and residing there since 1952. The suit was decreed vide judgment and decree dated 04.03.2016 (Annexure P-1) holding inter-alia that the defendant therein i.e. Bhagwan Singh (present respondent No.2) had neither examined any witness nor produce any document to prove his ownership over the suit property. The suit was accordingly decreed in favour of plaintiff-respondent No.1 (decree holder). Admittedly, the appeal and the regular second appeal preferred by Bhagwan Singh (present respondent No.2) against the judgment and decree dated 04.03.2016 passed by the Trial Court were dismissed.

Respondent No.1 (decree holder) filed an Execution Application under Order 21 Rule 35 of the Code of Civil Procedure, 1908 seeking delivery of possession of the property bearing Khasra No.720 (1-0) Khewat No.1818/1748, Khatauni No.2106 measuring 1 kanal as mentioned in the jamabandi for the year 2007-08 situated at village Kokari Kalan Sumali, District Moga. Admittedly, the objections were filed by Bhagwan Singh, the judgment debtor (present respondent No.2), and were dismissed. The petitioner filed third party objections (Annexure P-3) stating therein that the petitioner had filed an application to the revenue authorities for proper identification of his property and the Deputy Commissioner, Moga vide his letter bearing No.1608 dated 16.08.2019 had held that the property in possession of the petitioner was Khasra No.719.

Therefore, as per the petitioner, the respondent No.1 (decree holder) could not get the possession of Khasra No.719. A reply (Annexure P-4) was filed by the respondent No.1 (decree-holder) wherein it was stated in the preliminary objections that the petitioner had no concern or connection with the suit property and that he is the real son of the judgment debtor (present respondent No.2) and that during the entire trial no such ground was raised by the judgment debtor (present respondent No.2) that he was not in possession of the suit property or the suit property does not fall in Khasra No.720. It was further stated in the reply that report dated 16.08.2019 of the Deputy Commissioner, Moga was based on the alleged report dated 13.08.2019 of the Naib Tehsildar, Ajitwal wherein it had been mentioned as *"It is look like that house of the JD is situated in Khasra No.719, but as per revenue record, the said house is situated in Khasra No.720"*. It is further undisputed that the petitioner had filed a suit for permanent injunction restraining the respondent No.1 (decree-holder) from interfering in his peaceful possession and from forcibly dispossessing him from his house by relying upon a report dated 13.08.2019 of Naib Tehsildar, Ajitwal, which report is also the basis of the order passed by the Deputy Commissioner, Moga. Vide judgment and decree dated 12.11.2019 the suit filed by the petitioner stands dismissed.

Learned counsel for the petitioner would contend that the third party objections raised by the petitioner ought to have been considered by the Executing Court inasmuch as it has been brought on record that the petitioner was in possession of the property and that respondent No.1 (decree-holder) had no right to take the possession of the property bearing

Khasra No.719. Learned counsel for the petitioner has further relied upon the letter dated 16.08.2019 of the Deputy Commissioner, Moga based on the report of the Naib Tehsildar, Ajitwal dated 13.08.2019 to contend that the house of the judgement debtor (present respondent No.2) was actually situated in Khasra No.719 but, as per the revenue record, it is situated in Khasra No.720.

Heard learned counsel for the petitioner.

In the present case the undisputed facts are that the judgment debtor (present respondent No.2) remained unsuccessful right upto this Court and the suit filed by the respondent No.1 (decree-holder) was decreed. In the execution proceedings, the objections were filed by the judgment debtor (present respondent No.2) were also dismissed. Thereafter, the objections were filed by the petitioner as a third party. As already noted, the petitioner is the son of the judgement debtor (respondent No.2).

The contention of learned counsel for the petitioner that the letter dated 16.08.2019 of the Deputy Commissioner, Moga relying on the report of Naib Tehsildar, Ajitwal dated 13.08.2019 stating that it looks like that the house of the judgement debtor is situated in Khasra No.719, but as per revenue record, the same is situated in Khasra No.720, cannot be accepted as three Courts have categorically held that the respondent No.1 (decree holder) was entitled to possession of the property bearing Khasra No.720 (1-0) Khewat No.1818/1748, Khatauni No.2106 measuring 1 kanal as mentioned in the jamabandi for the year 2007-08 situated at village Kokari Kalan Sumali, District Moga. The judgment and decree dated

04.03.2016 passed by the Trial Court has attained finality. In the suit a specific stand was taken by the father of the petitioner that he was owner in possession of the suit property along with his brothers and had been residing in the said house since 1952. This assertion by the judgment debtor (present respondent No.2) was not accepted and he remained unsuccessful upto this Court. Thereafter, the judgment debtor (present respondent No.2) also tried to stall the execution proceedings by filing objections which were also dismissed. The third party objections preferred by the petitioner based on the letter dated 16.08.2019 of the Deputy Commissioner, Moga stating that the property in possession of the objector was bearing Khasra No.719 are not tenable in law for the reasons that firstly, before the three Courts no such argument or contention was ever raised by the judgment debtor (present respondent No.2) nor was it pleaded or contended that the petitioner was in possession of the suit property. The letter dated 16.08.2019 of the Deputy Commissioner, Moga has also been rejected by the Civil Court inasmuch as the petitioner had filed a suit for permanent injunction against the respondent No.1 (decreeholder) for restraining him from interfering in the peaceful possession and from forcibly dispossessing him from his house, which suit was also dismissed. In the said suit reliance was placed on the report dated 13.08.2019 of the Naib Tehsildar, Ajitwal which report is the basis of the letter dated 16.08.2019 of the Deputy Commissioner, Moga. Hence, the present petitioner cannot gain any advantage from the said letter.

In view of the above, I do not find any merit in the present civil revision petition which is nothing but an endeavour on the part of the

petitioner to try and stall the execution proceedings and to deprive the respondent No.1 (decree-holder) from enjoying the fruits of the judgment and decree dated 04.03.2016 passed in his favour. Accordingly, the present civil revision petition is dismissed.

23.11.2021

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

**NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO**