

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

105

**CR-982-2018(O&M)
Date of Order: 02.04.2022**

JAI SINGH

..Petitioner

Versus

RAJESH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Nehra, Sr. Advocate
with Mr. Bindu Tanwar, Advocate
Mr. Reetesh Kumar, Advocate
for the petitioner.

Mr. Gopal Sharma, Advocate
for respondent No.1 to 8.

ANIL KSHETARPAL, J(Oral)

The petitioner is not a party to the judgment and decree dated 07.10.1992. The aforesaid decree was passed in favour of Sh. Hukam Chand in which Sh. Dalel Singh was the defendant. While passing the decree, the Court found that Sh. Hukam Chand is in possession of 372 square yards area as per the site plan Ex.P-1. Subsequently, Sh. Dalel Singh and his mother Smt. Ashrafi filed a suit for permanent injunction while impleading Sh. Hukam Chand @ Hukmi as defendant. The aforesaid suit filed by Sh. Dalel Singh and his mother was dismissed on 16.05.1997. The first appeal filed against judgment dated 16.05.1997, was also dismissed on 17.02.1998.

An FIR No.102, dated 01.05.2000, under Section 448, 506 of the IPC, Police Station Sadar Bahadurgarh, was registered against Sh. Karan Singh and Sh. Jai Singh (petitioners herein) under the provisions of IPC for house trespass and causing damage to the property of legal representatives of Hukam Chand. The legal representatives of Sh. Hukam Chand filed an application under Order 21 Rule 32 CPC before the Executing Court

alleging the violation of judgment and decree dated 07.10.1992. The aforesaid execution petition was dismissed. However, High Court in Civil Revision No.2036 of 2009, titled as “Rajesh Vs. Dalel Singh and others” decided on 23.07.2013, set aside the order passed by the Executing Court while directing the Executing Court to execute the decree. The moment Executing Court issued warrants of possession, the petitioner filed an objection petition, which has been dismissed by the Executing Court on 01.12.2017.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The learned Senior counsel representing the petitioner while stressing on the point that the judgment and decree dated 07.10.1992, is granted ex parte, submits that the aforesaid judgment and decree is not binding on the rights of the petitioner, who owns a house in the property in dispute. He further contends that his objection petition should not have been dismissed without granting an opportunity to the petitioner to lead evidence to prove his right, title or interest in the property by framing proper issues.

Per contra, the learned counsel representing the respondent contends that the petitioner has failed to produce any material even to establish, prima facie, that he has any right, title or interest in the property. He submits that in fact Sh. Jai Singh, the petitioner is a friend of Sh. Dalel Singh, who had already suffered judgment not only on 07.10.1992, but also on 16.05.1997.

During the course of hearing, learned Senior counsel representing the petitioner was requested to draw the attention of the Court to any, prima facie, material to prove that Sh. Jai Singh has been in the

possession of the property in dispute prior to 07.10.1992. However, learned counsel submits that this can only be proved when the permission to lead evidence is granted.

As regards the first argument, undoubtedly, the judgment and decree passed on 07.10.1992, is a decree in *persona* and not in *rem*. However, it is for the petitioner to, prima facie, satisfy the conscious of the Court that regarding the existence of at least a possessory right in the property accruing before 07.10.1992.

On the other hand, the respondent is waiting to execute the decree, which was passed nearly 30 years back. The petitioner has not even produced any electricity bill in his name to prove that he was in possession of the property before 1992.

Keeping in view the aforesaid facts, the Executing Court is required to evaluate as to whether the objections have any merit or not. If the objections are totally frivolous, the Executing Court is well within its rights to reject the same without granting opportunity to lead evidence to the third party (petitioner herein). The Executing Court is only required to form an opinion as to whether there is some substance in the objections or not. The Court is not expected to frame issues in all the objections, which are filed by a third party unless they make out a genuine claim. Otherwise, such an approach would further delay the execution of decree and postpone the fruits of the decree to the decree holder, who has, already, exerted enough to get a decree in his favour.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

April 02nd, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*