

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

126

CR-2381-2022 (O&M)

Date of Decision: 07.06.2022

Pardeep Kumar

... Petitioner

VS.

Savita

... Respondent

Coram: Hon'ble Mrs. Justice Manjari Nehru Kaul

Present: Mr. Sudhanshu Makkar, Advocate for the petitioner

Manjari Nehru Kaul, J. (Oral)

The instant Civil Revision Petition has been preferred under Article 227 of the Constitution of India for setting aside of the order dated 30.05.2022 (Annexure P5) passed by learned Additional Civil Judge (Sr.Divn.), Bhiwani.

Learned counsel for the petitioner *inter alia* submits that the suit property has not been properly identified in the decree, therefore, the *ex parte* decree dated 12.07.2017 passed by the trial Court cannot be executed.

Learned counsel submits that a perusal of the registered Sale Deed No.4110 dated 13.07.2012 (Annexure P3) reveals that the property has been described as “*Gher*” and not a house. Thus the decree *qua* the house of the petitioner is null and void, being contrary to the evidence on record. He submits that the Executing Court erred in dismissing the objections as the judgment and decree dated 12.07.2017 was passed behind his back and even though an application moved by him under Order 9 Rule 13 CPC was pending adjudication. Hence, until its decision the *ex parte* decree dated 12.07.2017 could not be executed.

I have heard learned counsel and perused the material on record.

It would be relevant to notice the conduct of the petitioner. The petitioner after the receipt of the summons in the Civil Suit entered appearance before the trial Court. However, subsequently, he was proceeded against *ex*

parte by the trial Court vide order dated 29.09.2015 due to his non-appearance. The petitioner thereafter moved an application under Order 9 Rule 13 CPC on 22.01.2018 which was dismissed in default on 28.11.2019 as the petitioner had failed to lead any evidence in support thereof. Subsequently, the petitioner moved another application under Order 9 Rule 13 CPC after concealing the factum of the dismissal of the previous application under Order 9 Rule 13 CPC. Even in the execution proceedings, the petitioner appeared on 24.02.2022 and thereafter even though he availed of several opportunities, no objections were filed by him and consequently, he was proceeded against *ex parte* on 06.05.2022. The petitioner chose to appear before the Executing Court again only after warrants of possession were issued by it for 30.05.2022. Therefore, it is evident that the petitioner is engaging in dilatory tactics just to prevent the respondent/decree-holder from enjoying the fruits of the said judgment and decree dated 12.07.2017. Still further, the dispute *qua* the identification of the suit property as to whether it was “*gher*” or house should have been raised by the petitioner during trial which he admittedly failed to do. Hence the Executing Court cannot be now expected to go behind the decree to settle the issue of identification of the suit property.

In the circumstances, the instant Civil Revision Petition being devoid of merits is hereby dismissed.

07.06.2022

V.Vishal

(Manjari Nehru Kaul)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No