

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

ESA-13-2021 (O&M)

Reserved on : 14.11.2022

Date of Decision : 14.12.2022

Surender Singh

....Appellant

VERSUS

Daya Ram and Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naresh Kumar, Advocate for the appellant.

ALKA SARIN, J.

The present execution second appeal has been preferred against the judgments dated 11.11.2016 and 22.07.2021 passed by the Executing Court and the lower Appellate Court, respectively.

The brief facts relevant to the present *lis* are that the plaintiff-DH-respondent No.1 herein instituted Civil Suit No.55 of 2010 against the defendant-JDs. The case was decided in favour of the plaintiff-DH-respondent No.1 vide judgment and decree dated 07.08.2012 holding that the plaintiff-DH-respondent No.1 had been using the agricultural land as described in the plaint being owner in possession and further restrained the defendant-JDs from interfering in the possession of the plaintiff-DH-respondent No.1 by taking forcible possession or constructing the road. Subsequently, an execution application was filed by the plaintiff-DH-respondent No.1 averring therein that the defendant-JDs were interfering in his peaceful use and possession. The defendant-respondent No.2 herein filed a reply denying knowledge of judgment and decree dated 07.08.2012 on the ground that he was not present in the village at the time of passing of the said judgment and decree. The other respondents in the execution

application also filed their replies. Though initially when the execution application was filed the relief claimed was of civil imprisonment of the defendant-JDs as well as relief of warrant of possession qua the suit land, however, vide a separate statement dated 09.11.2016 the plaintiff-DH-respondent No.1 gave up the JD Nos.2 and 4 and also withdrew the relief of civil imprisonment. During the pendency of the execution application, the present appellant filed third party objections dated 07.12.2013 claiming himself to be a shareholder in the property. However, when he stepped into witness box as RW-1, he categorically stated in his cross-examination that he had no concern with the property. On the basis of the pleadings and the evidence on the record, the execution application was allowed vide judgment dated 11.11.2016. The Executing Court inter-alia found that *“Hence, it has become aptly clear that respondent No.1 has wilfully and intentionally violated judgment Ex.DH1 dated 07.08.2012 in case titled “Daya Ram & Others versus Ravi & Others” by causing unwarranted interference in the use and possession of the applicant”*. Respondent No.1 before the Executing Court was Ravinder son of Ramdhan Singh who has been arrayed as respondent No.2 in the present appeal.

Aggrieved by the said judgment, only the present appellant preferred an appeal. The lower Appellate Court noticed in the impugned judgment dated 22.07.2021 that the appellant had got himself impleaded as a party by filing an application under Order 1 Rule 10 CPC and thereafter he appeared as RW1 and in his cross-examination he admitted that he had no concern with the property of the plaintiff-DH-respondent No.1. Resultantly, his objections were found to be unsustainable in law and accordingly dismissed. Hence, the present appeal.

On the request made by counsel for the appellant the records of the lower courts were summoned. Learned counsel for the appellant has reiterated the submissions made before the Courts below. No other fresh argument has been raised.

Heard.

Learned counsel for the appellant has not been able to satisfy this Court as to how the objections were maintainable in view of the fact that the appellant himself while appearing as RW1 had admitted in his cross-examination that he had no concern with the property of the plaintiff-DH-respondent No.1. In his cross-examination the appellant stated (transliterated) “*Dayaram ke numberon mein mera koi taaluk na hai, takseem 2006-07 mein hui thi*”. The JDs are not aggrieved by the judgments passed by the Executing Court and the Appellate Court and it is only the present appellant who despite admitting that he had no concern with the property has filed the present appeal. The objections as well as the present appeal are nothing but an endeavour to stall the execution proceedings.

In view of the above, the objections as well as the present appeal being wholly devoid of any merit are accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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