

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117

CR No.2532 of 2022

Date of Decision : 08.07.2022

Gajraj and Ors.

....Petitioners

VERSUS

Megh Raj And Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.P. Bhandari, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

This is a revision petition under Article 227 of the Constitution of India challenging the order dated 26.05.2022 passed by the Executing Court, Faridabad in Execution Petition No.57 of 2022.

Brief facts, which are relevant to the present *lis*, are that the respondent no.1-decree holder (plaintiff) filed a suit for permanent injunction in respect of a residential plot situated within the revenue estate of village Sarai Khawaja, Tehsil and District Faridabad bounded as described in the heading of the plaint. The petitioners-judgement debtors (defendants therein) took a stand that they are in settled possession of the property as *Gair Marusi* under the ownership of Municipal Corporation, Faridabad since the times of their grandfather. A counter claim was also filed by the petitioners-judgement debtors (defendants therein) alleging that they were in possession of the property for the last more than 50 years and the respondent no.1-decree holder (plaintiff therein) being a strong headed person was bent upon to dispossess them illegally and unlawfully.

The suit of the respondent no.1-DH as well as the counter claim of the petitioners-JDs was dismissed vide judgment and decree dated 22.09.2012. An appeal was preferred by the respondent no.1-DH in which

cross-objections were filed by the petitioners-JDs. The said appeal was allowed vide judgment and decree dated 17.11.2017 and the cross-objections of the petitioners-JDs were dismissed. Thereafter, the petitioners-JDs preferred RSA No.3023 of 2018 and RSA No.6206 of 2017 against the judgment and decree dated 17.11.2017 which were also dismissed vide judgment dated 11.02.2021. SLP preferred by the petitioners-JDs was also dismissed by the Hon'ble Supreme Court vide order dated 05.07.2021. An execution petition was filed by respondent No.1-DH in which objections were filed by the petitioners-JDs which were dismissed. Against the said order of dismissal of the objections, CR No.523 of 2022 was preferred before this Court wherein the following order was passed on 18.02.2022 :

“Inter-alia contends that under the garb of present execution proceedings, the decree-holder-respondent/ Megh Raj, wants to dispossess the petitioners from the land comprised in Khewat No. 310, Khatoni No.372, Rect. No. 7, Killa No. 17 (1-10), situated within revenue estate of Village Palla, Tehsil and District Faridabad, owned by Municipal Corporation, Faridabad and petitioners are continuing as gair mourusi.

Notice of motion.

Notice re: interim relief as well.

Mr. M.K. Sood, Advocate, who is present in Court, accepts notice on behalf of decree-holder/ sole respondent. On instructions, he submits that respondent is pursuing execution proceedings for obtaining possession of the property which was subject matter of dispute in Civil Suit No.84/1976 strictly as per

the judgment and decree dated 17.11.2017 passed by learned Additional District Judge, Faridabad and not beyond that.

On joint request, posted for arguments on 26.04.2022.

Let photocopy of records be requisitioned for the date fixed and petitioners shall deposit an amount of Rs.1000/- to defray the expenses before the executing Court.

Proceedings for execution of the decree dated 17.11.2017 shall continue. However, it is clarified that in case the Bailiff has any doubt regarding identification of the property in dispute in terms of the decree, he would be at liberty to take the assistance of some revenue official and Tehsildar, Faridabad shall fully cooperate in the matter to that effect.”

It was specifically stated in the order dated 18.02.2022 by this Court that the proceedings for execution of the decree shall continue and it was further clarified that in case the Bailiff had any doubt regarding identification of the property in dispute in terms of the decree, he would be at liberty to take assistance of revenue officials and the Tehsildar, Faridabad shall cooperate in the matter. It is pertinent to note that there was no stay of execution proceedings. Thereafter, the petitioners-JDs filed a second objection petition under Section 47 of the Code of Civil Procedure, 1908 raising the same very objections. The said objection petition was also dismissed on 28.03.2022. The order dismissing the second objection petition was challenged in CR No.1369 of 2022 and vide order dated 18.04.2022 the said revision petition was dismissed wherein the following observations were made :

“After passing of the said order, second objection petition under Section 47 of the Code of Civil Procedure, 1908 was filed by the petitioner-JDs on the ground that the property in question was required to be demarcated for effective execution of the decree. This Court, vide order dated 18.02.2022, had already clarified that in case the Bailiff has any doubt regarding identification of the property in dispute in terms of the decree he would be at liberty to take the assistance of some revenue official and Tehsildar, Faridabad shall fully cooperate in the matter to that effect. The same has been reiterated vide the impugned order. The petitioner-JDs appear to be obstructing the execution of the decree on one ground or the other and the second objection petition filed by the petitioner-JDs appears to be nothing but a tactic to delay the entire proceedings.

In view of the order passed by this Court in CR-523-2022, no further orders are required to be passed in the present revision petition. There was no occasion for the petitioner-JDs to file a second objection petition. The Executing Court has rightly dismissed the second objection petition.

The present revision petition, which is wholly devoid of any merits, is accordingly dismissed.”

Thereafter, on 09.05.2022, an order was passed by the Executing Court appointing Smt. Neha Saharan, Tehsildar, Badkhal as Duty Magistrate for execution of the warrant of possession. It was noticed in the said order that on the earlier date the warrant remained unexecuted for want

of appearance of decree holder and, hence, fresh warrant of possession was issued for 26.05.2022 along with police help and the appointed Duty Magistrate, Smt. Neha Saharan, Tehsildar, Badkhal, was directed to get the warrant of possession executed as per law. The warrant of possession yet again remained unexecuted for want of cooperation by the Duty Magistrate, Smt. Neha Saharan, Tehsildar, Badkhal, and it has been noticed in the order dated 26.05.2022 that the appointed Duty Magistrate had stated that she will execute the warrant of possession only after issuing notice to the Municipal Corporation, Faridabad and other co-sharers of the property in question. It has further been noticed in the impugned order that there are no co-sharers in the property and that the identity of the property had been duly dealt with by the Appellate Court and by this Court and thereafter by the Hon'ble Supreme Court. The objections filed had also been dismissed by this Court. It was further noticed in the order that the Bailiff concerned had raised no doubt regarding the identity of the property. Thereafter, the following observations were made qua the Duty Magistrate :

“In such circumstances, the objections raised by learned Duty Magistrate to the execution of decree tantamounts to sitting in appeal to a decree upheld by Hon'ble Supreme Court of India. The only purpose to get a Duty Magistrate appointed is to maintain law and order at the time of execution of warrant of possession. However, it appears that learned Duty Magistrate is altogether trying to divert the whole proceedings of execution of the decree. Accordingly, learned Duty Magistrate is hereby advised to remain constraint to the duty assigned to her.”

Vide the impugned order fresh warrant of possession was issued along with the Police help for 16.07.2022 and the appointed Duty Magistrate has been directed to ensure law and order at the time of execution of the decree. It has further been observed that the appointed Duty Magistrate would remain present in Court in case the warrants remain unexecuted for want of her cooperation. Aggrieved by the said order the present revision petition has been filed.

Learned counsel for the petitioners-JDs has contended that the identity of the property still remains in dispute and that the decree is inexecutable till such time as the identity of the property is determined.

Heard.

Similar arguments were raised by learned counsel for the petitioners-JDs before this Court in CR No.1369 of 2022 which was dismissed vide order dated 18.04.2022. A perusal of order dated 11.02.2021 passed in RSA No.3023 of 2018 and RSA No.6206 of 2017 reveals that a specific argument was raised by learned counsel for the appellants therein, which has been noticed as under :

“(iii) The defendants have not produced any lay out plan to prove that the property in dispute falls within the revenue estate of village Palla and not within the revenue estate of village Sarai Khawaja.”

Thereafter, the said argument was dealt with and following findings were returned :

“It may be noticed that the entire area surrounding the plot in dispute has already developed into a colony and has

come under the purview of Municipal Corporation, Faridabad. The reference to the revenue estate is only for the purpose of identification. The plaintiff has not only identified the property by its size by describing its length and breath but also given the details of the properties surrounding the plot in dispute. Through the site plan Ex.P1 the property has been identified. Still further, learned First Appellate Court has examined the record and found that the description of the property given in Ex. P1 matches with the lay out plan Ex.PZ, produced in execution petition in some other case. The Court noticed that only difference between the two lay out plans is with regard to the property situated on the western side. It has been noticed that in the lay out plan Ex.P1 towards the western side, house of Ram Chander has been shown whereas in Ex.PZ the house of Ram Chander, Girwar and Girdhari, who are brothers, has been shown. Thus, the learned First Appellate Court has come to a conclusion that the identification of the property is not in dispute. Still further, the defendants while filing the written statement do not dispute that their father did file a suit against the plaintiff which was dismissed on 05.11.1999. Further, the defendant no.1 Harinder Singh, as noticed above, has himself pleaded in a different litigation that the property in dispute is owned and possessed by the plaintiff.”

The SLP preferred against the said judgment was also dismissed.

It is strange that once the argument of the petitioners-JDs as

raised in RSA No.3023 of 2018 and RSA No.6206 of 2017 before this Court stood specifically rejected by holding that the identification of the property was not in dispute and thereafter affirmed by the Hon'ble Supreme Court, the petitioners-JDs, in order to delay the execution and to cause unnecessary hindrances, are repeatedly approaching this Court by raising the same very objections.

In view of the above the present revision petition, which is nothing but an abuse of the process of law, is dismissed. Further, keeping in view the conduct of the petitioners-JDs, costs of Rs.10,000/- are imposed on the petitioners-JDs which costs be deposited with the Punjab and Haryana High Court Legal Services Committee.

Dismissed. Pending applications, if any, also stand disposed off.

08.07.2022
jk

(ALKA SARIN)
JUDGE

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