

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

127

CR-2832-2022

Date of decision: 21.07.2022

Inder Pal

.....Petitioner

Versus

Mam Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjay Jain, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside the order dated 25.05.2022 (Annexure P-1) passed by learned Additional Civil Judge, Naraingarh.

Learned counsel for the petitioner contends that the impugned order (Annexure P-1) is against the settled law as it has been passed without appreciating the factual position and the evidence on record. He submits that the land bearing khasra No.59/36 was self acquired property of the petitioner and hence could not have been distributed between the parties without paying the value of the land. He further submits that the Court below failed to take into account that subsequent to a family settlement dated 18.06.1996, another family settlement dated 24.12.1996 was effected between the parties. As per the second settlement effected, it was agreed upon that the parties including the respondents/plaintiffs would relinquish their rights and would not claim 12 marlas of land from the petitioner. Learned counsel still further submits that respondents No.1 and 2 did not deny the family

settlement as admittedly they did not file any reply to the objections of the petitioner. He furthermore submits that the decree which had been passed was passed by a Court, which lacked jurisdiction in respect of the subject matter and was thus null and void in the eyes of law and non-executable. In support, learned counsel has placed reliance upon ***M/s East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd. : 1991(2) SLJ 727.***

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

The petitioner is challenging the merits of the decree in execution proceedings on the ground that property bearing khasra No.59/36 was not ancestral but his self acquired property and hence no decree could have been passed in respect of that property. This Court, however, is unable to concur with the submissions made by learned counsel as it is settled proposition of law that an executing Court cannot go behind the decree during execution proceedings. It is bound to execute the decree as it stands in accordance with the terms set out therein. The appropriate forum to challenge the decree on merits would have been the appellate Court rather than the executing Court. His submission thus qua the lack of jurisdiction of the trial Court to deal with the property bearing khasra No.59/36 and the decree thus being null and void is devoid of any merit. Further, Section 9 of the CPC provides that the Courts shall (subject to provisions contained therein) have the jurisdiction to try all suits of civil nature except those suits whose cognizance is either expressly or impliedly barred. Coming to the instant case there is no embargo on the jurisdiction of the trial Court

being a civil Court to decide a suit which is civil in nature. The judgment of M/s *East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd. : 1991(2) SLJ 727* relied upon by learned counsel would not in any manner come to the rescue of the petitioner as jurisdiction of the civil Court qua the subject matter in that case was excluded by the Tamil Nadu Building (Lease and Control) Act, 1960. However, in the instant case the jurisdiction of civil Court qua the subject matter is not barred by any statute. In the circumstances, this Court does not find any merit in the submissions made by learned counsel.

It has not been disputed by learned counsel that the impugned judgment and decree was ever impugned by him before the appellate Court.

Dismissed.

21.07.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No