

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

CR-2954-2022 (O&M)

Reserved on : 29.07.2022

Date of Decision :- 04.08.2022

Sukhjinder Singh

...Petitioner

versus

Mandeep Kaur & Anr.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. I.S.Dhaliwal, Advocate, for the petitioner.

ALKA SARIN, J.

CM-9091-CII-2022

This is an application for grant of leave to file the present petition.

Allowed as prayed for subject to all just exceptions.

CM stands disposed off.

CR-2954-2022

The present revision petition under Article 227 of the Constitution of India has been filed impugning order dated 13.05.2022 (Annexure P-12) vide which the application to recall the warrants of possession and for dismissal of the execution of decree-holder was dismissed.

Learned counsel for the petitioner would contend that the property qua which the execution has been filed is different from the property qua which the decree was passed. It is further the contention of the learned counsel that the decree was passed qua 1813 sq.ft whereas as per site plan filed in execution proceedings the total area comes to 2201 sq.ft.

Heard.

The brief facts relevant to the present *lis* are that the respondent-decree holder filed a suit for permanent injunction for restraining respondent No.2-herein and from installing the new electricity meter in connivance with the judgment-debtor/petitioner-herein as also a suit for possession. It is averred in the plaint that the suit property, which is a residential house was mortgaged by the respondent-decree holder qua possession in favour of the judgment-debtor/petitioner-herein vide mortgage deed dated 15.02.2014 for a sum of Rs.4,50,000/-. The Trial Court vide judgment and decree dated 13.09.2018 though dismissed the suit qua permanent injunction, however the suit for possession of the house in question was decreed on tendering an amount of Rs.4,01,500/- to the defendant to the judgment-debtor within a period 30 days. The amount stood paid as directed. An appeal was preferred by the judgment-debtor/petitioner-herein and vide judgment and decree dated 17.10.2019, the same was dismissed. An execution petition was preferred by the decree-holder. In the execution proceedings, objections were filed by the judgment-debtor on the ground that since a regular second appeal had been preferred against the judgments and decrees dated 13.09.2017 and 17.10.2019, before this Court, hence the decree-holder has a legal right to move the execution petition. It was noticed in the order dated 05.08.2021 dismissing the objection that no record of the pleadings of the appeal pending before this Court was placed before the Executing Court. Accordingly the objections were dismissed vide order dated 05.08.2021. Thereafter warrants of possession were issued. The judgment-debtor/petitioner-herein filed an application for recalling of the warrants of possession, which has been dismissed by way of impugned order.

The argument of the learned counsel for the petitioner that the property is different from the property qua which the decree was passed is wholly unfounded. The suit in the present case was for possession of the house mortgaged with the judgment-debtor/petitioner-herein. The decree has been passed for possession of the said house as claimed by the decree-holder. The mortgage of the suit house vide mortgage deed dated 15.02.2014 has been upheld by the Courts below and the amount as directed by the Trial Court already stands deposited. The judgment-debtor/petitioner appears to be obstructing the execution proceedings by filing frivolous applications.

On a pointed query by this Court as to the status of the regular second appeal, which is stated to be pending before this Court against the judgments and decrees dated 13.09.2017 and 17.10.2019, it is candidly admitted by the counsel for the judgment-debtor/petitioner that the same had been filed few days back and the same has not been listed.

In view of the above, I do not find any merit in the present petition, which is dismissed accordingly. Pending applications, if any, also stands disposed off.

04.08.2022
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(ALKA SARIN)
JUDGE

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