

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4499 of 2019

Date of Decision: 04.04.2022

Mahabir

... Petitioner

Versus

Balbir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravinder Singh Dhull, Advocate,
for the petitioner.

Mr. R.N. Lohan, Advocate,
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. The petitioner is a decree holder. He had filed a suit for grant of decree of permanent injunction restraining the defendants from in any way raising any kind of construction over street located within Lal Dora and abadi deh of village Nidana.

2. The operative part of the decree reads as under:-

“This suit is coming before me (Sh. Sundeep Singh, Addl. Civil Judge, Sr Divn) for the final disposal on this 26th September of 2009 in the presence of Sh. Daya Singh Advocate for plaintiff and Sh. G.D. Goswami, Advocate for defendants. It is ordered that the suit of the plaintiff succeeds and is hereby decreed, with costs to the effect that the defendants are restrained from raising construction on the portion Gair Mumkin Street situated within Lal-Dora and abadi deh of village Nidana, Tehsil and Distt Jind bearing Khasra No. 340/3 and 348. As mandatory injunction and the defendants are directed to remove the unauthorized encroachment/construction raised by them over the suit property, within one month from today failing which the plaintiff can seek remedy of the court to remove the encroachment.”

3. In the first execution petition filed, the Court after noticing that

the obstruction to a certain extent has been removed, permitted the decree holder to withdraw the execution petition. The petitioner filed a second execution petition claiming that the encroachment has not been completely removed. The Court appointed a Local Commissioner to demarcate the area. The Deputy Tehsildar submitted a report on 29.06.2018. The Court was not satisfied with the same. Vide order dated 21.01.2019, the Court directed Local Commissioner to visit the spot and demarcate the suit property as per the site plan Ex.P-1. When the revenue official visited the spot, it was found that certain clarifications are required from the Court as khasra numbers have undergone a change. The Local Commissioner informed the Court vide his report dated 07.02.2019.

4. Strangely, the Executing Court chose to dismiss the execution petition after noticing that the boundary wall has already been demolished.

5. Once the Local Commissioner had reported that certain clarifications are required, the Court should have clarified the position rather than proceeding to dismiss the execution petition.

6. Keeping in view the aforesaid facts, the order under challenge is set aside. The executing Court is requested to proceed in accordance with law.

7. Disposed of accordingly.

(ANIL KSHETARPAL)
JUDGE

04.04.2022
manju

Whether speaking/reasoned Yes/No

Whether reportable Yes/No