

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4436-2022
Decided on : 14.10.2022

Mahabir

..... Petitioner

Versus

Risal Singh (deceased) thr. LRs and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arvind Kumar Yadav, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned orders dated 30.09.2022 (Annexures P-1 & P-2) passed by Addl. Civil Judge (Sr. Divn.) Jhajjar vide which objections filed by the petitioner were dismissed and warrant of possession were issued.

Learned counsel for the petitioner *inter alia* contends that the impugned order suffers from patent illegality and thus, deserves to be set aside. He submits that the Executing Court failed to appreciate that after the passing of the judgment and decree dated 04.06.2005, the Municipal Committee, Beri had acquired the ownership over the suit property in the year 2007. Hence, the Municipal Committee, Beri had acquired the status of decree-holder by virtue of Section 49 CPC and in the circumstances, the execution petition filed by respondents No.1 to 7 was not maintainable. He submits that respondents No.1 to 7 filed the execution application by

concealing the aforesaid material facts, therefore, the execution petition deserves to be dismissed at the very outset.

Learned counsel further submits that since the nature of the suit property is shamlat thola, only the Revenue Courts had the jurisdiction to adjudicate upon the dispute qua the suit property. Thus, the judgment and decree dated 04.06.2005 was passed by the Civil Court having no jurisdiction over the subject matter, hence, it being null and void could not be executed.

Heard learned counsel for the petitioner and perused the relevant material available on record.

The Executing Court vide impugned order decided the following applications moved by the petitioner and respondent No.10:

- (i) Application dated 30.01.2017 moved by respondent No.10
- (ii) Application dated 18.07.2017 moved by respondent No.10
- (iii) Application dated 27.11.2019 moved by respondent No.10
- (iv) Application dated 26.11.2021 moved by respondent No.10
- (v) Application dated 08.09.2022 moved by the petitioner
- (vi) Application dated 19.09.2022 moved by the petitioner
- (vii) Application dated 19.09.2022 moved by respondent No.10
- (viii) Application dated 20.09.2022 moved by the petitioner

A perusal of the impugned order reveals that the objections filed by respondent No.10 were dismissed by the Executing Court vide order dated 28.11.2016 and 03.01.2017. Thereafter, respondent No.10 approached this Court for staying the execution petition. However, his petition was dismissed and the following order was passed:

“I am of the view that petitioner-judgment debtor are unnecessarily prolonging the execution of the judgment and decree passed way back in the year 2005 and again sought time from the trial Court for filing objections to the demarcation report, in essence, they are delaying the execution of the judgment and decree of the Courts below. The trial Court/executing Court should be wary in this regard, rather should not undertake the exercise, as it tantamount to going behind the decree particular owing to the report, aforesaid.”

Subsequently when the case was fixed for orders by the Executing Court after hearing the arguments on the various applications moved by respondent No.10, the petitioner moved as many as three more applications dated 08.09.2022, 19.09.2022 and 20.09.2022. Even respondent No.10 moved an application dated 19.09.2022. Therefore, this Court has no hesitation to observe that the petitioner and respondent No.10 were all along making repeated attempts to prevent the execution of the judgment and decree dated 04.06.2005. Interestingly, the petitioner and respondent No.10 in their respective applications as well as while making their submissions before the Court below took a categorical stand that their houses were not situated in the suit property i.e. Khasra No.145. Therefore, this Court fails to comprehend as to how the petitioner and respondent No.10 would be adversely effected by the execution of aforesaid judgment and decree. Moreover, the Executing Court while issuing the warrants of possession/ejectment by way of removal/demolition of illegal construction raised over Khasra No.145 gave the following directions:

“It is further made clear that while executing the

decree in question the executing official shall not touch upon any structure situated within khasra No.144. It is further made clear that since in the demarcation report dated 23.08.2022, conducted in pursuance of order of this Court in the case titled as 'Om Parkash vs. Rishal and others' in CIS No.911 of 2016 it has come that the house of JD No.4 Om Parkash is situated in Khasra No.144, therefore, the Executing Officer is directed that if while executing the warrant in question, he comes to other conclusion i.e. the house of JD No.4 or any portion thereof is situated in Khasra No.145, he shall not execute upon the warrant in question to that extent and shall submit his report in respect thereof in this Court on the next date of hearing, so that this Court could compare the said report with the LC report dated 23.08.2022 and further pass an order in respect thereof."

A perusal of the above reproduced directions further makes it abundantly clear that the Executing Court has consciously taken adequate measures to safeguard the construction not falling in Khasra No.145.

Furthermore, the Executing Court has appropriately dealt with all the objections raised by the petitioner while passing the impugned order. Learned counsel for the petitioner has not been able to controvert the fact that issue qua jurisdiction of Civil Court being barred was not even raised before the Executing Court. Hence, the Court below cannot be faulted with on this ground and for issuing warrants of possession qua suit property.

It would be relevant to observe here that the suit of the decree-holders was decreed on 04.06.2005 and even after almost 17 years the decree has not yet been executed due to which the community has not been

able to derive any benefit out of the suit property, which is common land, due to illegal encroachments. This Court cannot permit the execution proceedings to become a second round of litigation to frustrate the realization of the fruits of a decree passed by a Court of law.

As a sequel to the above, the instant petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

14.10.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No