

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.7943 of 2019

Reserved on : 29.10.2022

Date of Decision: 01.11.2022

Amar Singh (deceased) through his LRs and Others

....Petitioners

VERSUS

Rohtash and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mahendra Singh Tewatia, Advocate for the petitioners.

ALKA SARIN, J.

The present revision petition has been preferred under Article 227 of the Constitution of India for setting aside the order dated 27.07.2018 (Annexure P-4) passed by the Civil Judge (Junior Division), Palwal vide which the application of the DH/petitioners under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (for short 'CPC') has been dismissed and the objections filed by the JD/respondents have been allowed.

The brief facts relevant to the present *lis* are that a suit was filed by the DH/petitioners claiming themselves to be co-owners along with defendant-respondent no.1 in khatauni no.468, rectangle no.104, killa no.4/2, total measuring 1 kanal 15 marlas situated within the revenue estate of village Prithla, Tehsil and District Palwal (hereinafter referred to as the 'property in dispute'). The property in dispute was agricultural land and has not been partitioned by metes and bounds. Vide judgment and decree dated 05.10.2011 the suit was decreed and the defendants therein were restrained from raising construction over the property in dispute. An appeal was preferred against the judgment and decree which appeal was eventually withdrawn by the defendants on 01.03.2014. An application was filed by the

DH/petitioners under Order XXI Rule 32 CPC for initiating contempt proceedings against the defendant-respondents and for executing the judgment and decree dated 05.10.2011. It was averred in the application that defendant-respondent no.2 along with other respondent nos.3 to 6 and 7 and 8 had conspired with each other and constructed a new boundary wall illegally, unlawfully and forcibly. A reply was filed to the said application. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the judgment-debtor has disobeyed the Judgment and decree dated 05.10.2011 ? OPA
2. Whether the application is not maintainable ? OPR

The Executing Court held that there was no evidence of any disobedience and violation of judgment and decree dated 05.10.2011 on the part of the respondents and that there was further no evidence to show that there has been any construction of a new boundary wall as alleged. Vide the impugned order dated 27.07.2018, the execution petition was dismissed. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the DH/petitioners would contend that there was ample evidence on the record to show that the wall has been constructed in violation of the judgment and decree dated 05.10.2011. In support of his argument, learned counsel for the DH/petitioners has referred to photographs Ex.AW1/A to Ex.AW1/E and receipts of photographs Ex.AW1/F to Ex.AW1/H.

Heard.

In the present case the DH/petitioners had filed an execution petition under Order XXI Rule 32 CPC alleging therein violation and

disobedience of the judgment and decree dated 05.10.2011 and for execution thereof. The only evidence led by the DH/petitioners regarding the alleged construction were photographs Ex.AW1/A to Ex.AW1/E and receipts of photographs Ex.AW1/F to Ex.AW1/H. A perusal of the impugned order reveals that the witness, AW1 Hemraj, had tendered the photographs Ex.AW1/A to Ex.AW1/E purported to have been taken on 01.04.2012 and 11.04.2012, and also placed on record the receipts of the said photographs as Ex.AW1/F to Ex.AW1/H. However, in his cross-examination the said witness was unable to explain as to how bill no.2139 bears the date '11.04.2012' whereas bill no.2130 bears the date '03.05.2012'. It was also noticed that there was no stamp or any other mark over the bill which could sanctify or denote the preparation of the said photographs by Love Photo Studio. It is further an admitted case that the JD/respondents had been in possession of the property in dispute for a long time. In the judgment and decree dated 05.10.2011 it was specifically noticed that the property in dispute is bounded by a boundary wall. The finding returned by the Trial Court is reproduced as under :

“20. In this case the defendant no.2 has failed to show his status in which he is holding the suit property. The limited relief of plaintiffs is that the defendants be restrained from raising construction over the suit property. In the instant case also if the defendant no.2 raised construction over the suit property then it will certainly prejudice the rights of the plaintiffs. No doubt it has come in evidence that the suit property has been bounded by a boundary wall, meaning thereby it is not an ordinary agricultural by filed but is some valuable

place of land. If a person who has no right, title or interest in the suit property and is bent upon to raise construction over the same, any co-sharer can say what as unauthorized occupant is doing is a wrong and he has every right to seek injunction against that person. In this case also in this sense the plaintiffs are certainly entitled to injunction restraining the defendants from raising construction over the suit property.”

In view of the above and in view of the fact that there is no evidence on the record that there is any fresh construction of the boundary wall, the impugned order passed by the Executing Court cannot be faulted with. The present revision petition, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

01.11.2022
jk

(ALKA SARIN)
JUDGE

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