

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

CR-3031-2015(O&M)

Reserved on:-29.4.2023

Date of Pronouncement:-5.5.2023

Hardwari Lal and another

...Petitioners

Versus

Ashok Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Mukesh Yadav, Advocate
for the petitioners.

Mr.P.R. Yadav, Advocate
for the respondents.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 19.2.2015 passed by the Court of Civil Judge(Jr.Divn.), Mohindergarh vide which an application under Order 21 Rule 32 read with Section 151 CPC filed by decree-holders/plaintiffs has been dismissed.

2. Briefly stated, facts of the case are that plaintiff Hardwari and his son Suresh Kumar, both residents of village Mohammadpur Nangal, Tehsil & District Mohindergarh had brought a suit for grant of permanent injunction against defendants Ashok Kumar, Shayam Lal, Vipin Kumar, Lalit Kumar and Ashu, seeking to restrain the defendants from interfering into peaceful possession of the plaintiffs over the suit land. In the said suit filed, the plaintiffs claimed themselves to be owners in possession of land measuring 10 kanals 16 marlas comprised in khewat No.75 khatoni No.177 situated at village Mohammadpur Nangal, Tehsil & District Mohindergarh as per jamabandi for the year 2000-01 with which the

defendants have no concern and they are totally strangers but even then, they threatened to interfere in possession of the plaintiffs, giving rise to a cause of action to the plaintiffs to bring the suit in question.

3. On notice, all the defendants appeared and filed written statement contesting the suit raising various legal objections, on merits contending that defendant No.1 was owner of 6 kanals of the land comprised in khewat no.75, which is jointly owned by the parties to the suit and it has not yet been partitioned; the plaintiff No.2 Suresh Kumar had not purchased any specific piece of land; fields numbers mentioned in para no.2 of the plaint are jointly owned by the parties and they are in joint possession. In the end, the defendants prayed for dismissal of the suit.

4. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Civil Judge(Jr.Divn.), Mohindergarh gave issue-wise findings and decreed the suit of the plaintiff partly. Resultantly, the defendants were restrained from interfering into the peaceful possession of the plaintiffs over the land in khewat No.75 khatoni No.177 total land measuring 10 kanals 16 marlas.

6. Subsequently, the plaintiffs filed an application under Order 21 Rule 32 read with Section 151 CPC alleging that the judgment and decree passed in their favour and against defendants on 12.8.2009 had been violated by the defendants by encroaching upon some area of

khewat No.95 khatoni no.181, field No.54//5/1, 6/2 and request of the plaintiffs/decreed-holders for removal of encroachment has been declined by the respondents/JDs.

7. On notice, respondents No.1 to 4 put in appearance. Respondent No.1 filed a separate written reply. Respondents No.2 and 3 came up with a joint reply, whereas respondent No.4 also filed his own reply to the application.

In the written reply submitted on behalf of respondent No.1, he contended that he has no concern with the suit land and has not violated any order of the Court; as a matter of fact, the suit land is still joint and the applicants are not in possession over any specific portions.

Respondents No.2 and 3 in the joint written reply while showing ignorance about passing of the decree in favour of the applicants/plaintiffs contended that they were minors at the time of passing of the decree and no guardian was appointed to watch their interest, therefore, decree dated 12.8.2009 is null and void. These respondents have purchased the suit land and are in possession thereof.

Written reply filed on behalf of respondent No.4 was almost on the similar lines as that of respondents No.2 and 3.

8. On the pleadings of the parties following issues were framed:

1. Whether the JD has violated the decree dated 12.8.2009 in civil suit titled as Hardwari Versus Ashok as alleged in the application?
OPP.

2. Relief, if any.

9. The parties were afforded adequate opportunities to lead

evidence in support of their respective claims.

During the course of evidence of the applicants, Suresh Kumar applicant No.2 appeared as DHW1/A and repeated on oath the case of the applicants as given in the application.

In rebuttal, respondents examined JDW1/A Pardeep Kumar and JDW2/A Ashok Kumar.

10. After hearing arguments, the Court of Civil Judge(Jr.Divn.), Mohindergarh decided issue No.1 against the applicants and issue No.2 was decided dismissing the application. This was so done vide judgment/order dated 19.2.2015.

11. Such order left the applicants/decreed-holders aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. As far as passing of decree in favour of revision petitioners in Civil Suit No.RT 729 on 12.8.2009 is concerned, the same is not much disputed, rather it is established on record. The plaintiffs had approached the Court seeking taking of action against defendants/respondents for violating the decree in favour of the plaintiffs by carrying out encroachment over the suit land. The trial Court had appointed a Local Commissioner, who had visited the spot and submitted his report dated 28.11.2014 Ex.P1. However, while scrutinizing the same, the trial Court did not find that it reflected any specific violation of impugned decree on

the part of the respondents. The trial Court had made an observation that Local Commissioner had not been summoned by the applicants to enable the respondents to cross-examine him. The solitary statement of DHW1/A Suresh Kumar was not found to be cogent and convincing so as to hold that allegations in the application stood established. Therefore, the application had been rejected.

14. I find that report of Local Commissioner was an important piece of evidence and if the trial Court felt the necessity it could have directed the applicants to cause appearance of the Local Commissioner for the purpose of facing cross examination or in the alternative, the Court could have summoned him as a Court witness but it was not so done. The aspect that land is still joint between the parties has also not been examined in a proper and appropriate manner. Therefore, I find that the matter needs to be re-examined by the trial Court of Civil Judge(Jr.Divn.)/Executing Court, Mohindergarh and the impugned order dismissing the application is not sustainable.

15. Accordingly, the revision petition is accepted. The impugned order is set aside and the matter is sent back to Civil Judge(Jr.Divn.)/Executing Court, Mohindergarh with a direction to decide the application afresh. The Court concerned would direct the applicants to summon the Local Commissioner with record and then to examine him with regard to the report submitted by him and any other relevant document in that regard, affording an opportunity of cross examination to the respondents. Since the report is dated 28.11.2014 and a period of more than 8 years has elapsed from that date, the official concerned might or

might not be available and in case he is not available, then the Court concerned may appoint a fresh Local Commissioner directing him to visit the spot in presence of both the parties, carry out demarcation of the disputed property and then submit fresh report. In that case, the said Local Commissioner may be examined in the Court in an attempt to find out the factual position. If any of the parties want to lead further evidence, such party may be allowed reasonable opportunity to do so and then after hearing counsel for the parties fresh order be passed. The matter needs to be dealt with and scrutinized in a careful and cautious manner because violation of a decree passed by the Court of competent jurisdiction under Order 21 Rule 32 CPC may result in attachment of property of wrongdoer and/or his detention in the civil imprisonment.

16. The parties through their counsel are directed to appear before the Civil Judge(Jr.Divn.)/Executing Court, Mohindergarh on 26.5.2023.

Since the main revision petition has been allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

5.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No