

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

CR-818-2020 (O&M)

Date of decision: January 16, 2023

Darshan Kumar

...Petitioner

Versus

Rakesh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is under Article 227 of Constitution of India for setting aside the impugned order dated 22.10.2019 (Annexure P-6) passed by learned Civil Judge (Junior Division), Nabha, whereby objections filed by respondent/Judgment Debtor were allowed and petition filed by petitioner/ Decree Holder under Order 21 Rule 32 CPC was dismissed.

2. Brief facts first, as pleaded in the revision petition.

2.1. Plaintiff/petitioner filed suit for permanent injunction restraining defendant/respondent from causing any damage to common wall and also restraining him from encroaching upon the site under the staircase. Vide judgment and decree dated 19.07.2014 (Annexure P-1), learned trial Court partly decreed the suit of petitioner and restrained defendant/respondent from encroaching upon the space under the staircase at point 'D' as shown in site plan towards common *Deodi* and further decreed the relief of mandatory injunction directing the respondent to remove the gate/door installed by him in the space under the staircase.

2.2. Respondent/defendant unsuccessfully challenged the judgment and decree dated 19.07.2014 (Annexure P-1) in the first appeal before learned

Additional District Judge, Patiala as well as in Regular Second Appeal before this Court, which were dismissed vide judgments and decrees dated 02.09.2015 (Annexure P-2) and 30.08.2017 (Annexure P-3) respectively.

2.3. Since respondent failed to comply with the judgment and decree dated 19.07.2014 (Annexure P-1), which has attained finality, petitioner filed application dated 21.03.2016 (Annexure P-4) under Order 21 Rule 32 CPC for compliance of the above said decree, which has been dismissed by learned Civil Judge (Junior Division), Nabha vide order impugned herein.

3. Learned counsel for petitioner submits that learned Executing Court fell in grave error while allowing the objections of respondent/Judgment Debtor and has gone beyond the scope of decree under execution, making it un-executable.

4. Given the nature of order being passed, there is no necessity to issue notice to respondent/JD, as no prejudice would be caused to him. Notice to respondent herein is thus dispensed with.

5. I have heard learned counsel for the petitioner and gone through the case file.

6. Impugned order is premised, *inter alia*, on the following reasoning:

“xxxxx

15. The controversy in the present case is that by way of present petition, petitioner Darshan Kumar is seeking compliance of judgment and decree dated 19.07.2014 passed on 19.07.2014 partly in his favour and the operative part of the decree-sheet states that defendant (respondent herein) is restrained from encroaching upon space under stairs at point D shown the site plan Ex. Pl towards the common deodi and further defendant is directed to removed the door/gate installed by him in the space under this stair.

16. Per contra, in reply filed to the petition, respondent has submitted that rather it is the petitioner (plaintiff in suit) who has forcibly installed a door in the common space under the stairs. As

such, it is the petitioner who has encroached upon the space under the stair case of the common deodi by installing a gate.

17. This aspect of existence of gate being installed by the petitioner under the common space under stair case towards common deodi is admitted by the petitioner in his cross-examination at the time of his appearance in witness box as PW-1. Petitioner has further admitted that he is not residing in the suit property and it is also admitted by the petitioner that all the co-sharers are using the common space of deodi as per the their respective shares. It is also admitted by the petitioner that they have converted the kitchen falling into their share out of the suit property into a shop and at the time of doing so he has not taken any consent from the other co-sharers, at the same admitting multiple litigation with them. Petitioner in his cross-examination has also admitted that he has put material in the common deodi as evident from photographs placed on record by the respondent in the shape of Ex. R1 to Ex. R4.

18. As such, from the above situation, this Court is of the firm and considered view that it is the petitioner (plaintiff in the suit) who has himself encroached upon the common place in and around stairs and as such, he cannot claim that respondent (defendant in the suit) be asked to remove the encroachment done by him. It is proved to the satisfaction of this Court that respondent has not violated the judgment and decree dated 19.07.2014 against which the present petition is filed.

19. Moreover, the property is still joint the revenue records. As such, the relief claimed in the present petition too cannot be allowed.

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xxxxx

xxxxx ”

(emphasis supplied)

7. A perusal of above would show that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this court.

8. Revision petition is thus, dismissed in view of the findings given by the Executing Court that the decree since stands satisfied inasmuch as the Judgment-Debtor is not causing any encroachment on the common place and there being no violation of the judgment and decree sought to be executed.

However, same shall not preclude the petitioner at any subsequent stage hereafter to approach the Executing Court afresh in case the Judgment-Debtor causes any encroachment under the garb of dismissal of the execution petition by the learned Courts below. Trite it is to say that Executing Court cannot go beyond the decree so as to make any comments on the merits thereof and to that extent any observations made by the Executing Court were wholly unwarranted. The relief granted to the plaintiff by the decretal Court, as upheld in the first appeal as well as second appeal, has since attained finality, it is not open either for the Executing Court or even for this Court to make any comments on the merits thereof. The judgment and decree sought to be executed by petitioner in the Execution petition has to be implemented in letter and spirit. Needless to say, in case there is any violation of the same, the Judgment-Debtor shall be liable for consequences and be put to strict terms in accordance with law.

9. Dismissed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 16, 2023

Sonia Puri

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No