

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

**106**

**CR No.8483 of 2016 (O&M)**

**Reserved on : 14.02.2023**

**Date of Decision : 14.03.2023**

Sunder

....Petitioner

VERSUS

Lala Ram through his LRs and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Ashok Kaushik, Advocate for the petitioner.

Mr. Arihant Jain, Advocate for respondent No.2.

**ALKA SARIN, J.**

The present revision petition has been filed challenging the order dated 11.11.2016 whereby the application filed under Order XXI Rule 32 of the Code of Civil Procedure, 1908 has been allowed.

The brief facts relevant to the present *lis* are that respondent Nos.1 and 2 herein filed a suit for permanent injunction and mandatory injunction. Vide judgment and decree dated 28.02.2009, only a decree for permanent injunction was passed and the decree for mandatory injunction was declined. On 12.10.2011 respondent Nos.1 and 2 filed an application under Order XXI Rule 32 CPC for directions to remove the encroachment from the *rasta* on the suit property. The details when the property was encroached upon are woefully missing from the said application. A reply was filed to the said application. Vide order dated 22.08.2014 the said application was allowed by the Executing Court and it was ordered that the illegal possession from the *rasta* be removed. The petitioner herein filed CR No.6230 of 2014 and on 16.02.2016 the following order was passed therein :

*“Counsel for the respondent states that he will be satisfied with an observation from the Court that the judgment debtor-petitioner will not cause any encroachment to the passage subsequent to the grant of decree. I reiterate what the decree states and restrain the petitioner-defendant from causing any encroachment.*

*The order already passed is set aside and the revision petition is disposed of with the above observation.”*

Yet again an application was filed under Order XXI Rule 32 CPC that since there was an encroachment hence the same be directed to be removed. Vide the impugned order dated 11.11.2016 it has been directed that the encroachment be removed and the order dated 22.08.2014 be complied with. In the application it has been averred that on 21.02.2016 Khasra No.537, which is a *rasta aam*, had been encroached upon and the building material had been collected at the spot. Vide the impugned order dated 11.11.2016 the following directions have been given :

*“7. Keeping in view the above discussion, the applications of the applicant are accordingly disposed of. Gram Panchayat is directed to comply the directions given by the Predecessor Court of Sh. Vikas Gupta, the then Learned Additional Civil Judge (Sr. Divn.), Hodal in his judgment dated 22.08.2014. However, Gram Panchayat can take assistance from the concerned SHO after taking prior permission from this Court.”*

Learned counsel for the petitioner would contend that the relief of mandatory injunction was earlier declined while decreeing the suit for permanent injunction. Thereafter, in CR No.6230 of 2014 the counsel for the respondents herein had stated that he would be satisfied with an observation that the judgment debtor i.e. petitioner herein will not cause any encroachment to the passage subsequent to the grant of decree. Immediately thereafter, an application was filed for removal of the encroachment, which had been allowed vide the impugned order dated 11.11.2016. Learned counsel for the petitioner would further contend that in CR No.6230 of 2014, on 16.02.2016 the counsel for the respondents had stated that he would be satisfied if the statement is recorded that the judgment debtor i.e. petitioner herein will not cause any encroachment to the passage subsequent to the grant of decree and that without there being any evidence on the record that there has been encroachment the impugned order had been passed.

*Per contra* learned counsel for respondent No.2 has vehemently contended that since there was encroachment hence the order has rightly been passed.

I have heard learned counsel for the parties.

In the present case, vide order dated 16.02.2016 passed in CR No.6230 of 2014, it was noticed that counsel for the respondents therein had stated that he would be satisfied with an observation from the Court that the judgment debtor i.e. petitioner herein would not cause any encroachment. Thereafter, an application for removal of the encroachment was filed which has been allowed vide the impugned order dated 11.11.2016. The said order does not state as to on what basis the Court has arrived at the conclusion that there had been an encroachment. Merely by relying upon the document

Mark 'AB' a conclusion had been drawn that there had been encroachment by the petitioner. There is nothing forthcoming to prove that the petitioner had caused any encroachment. The impugned order dated 11.11.2016 is hence not sustainable in law. The same is accordingly set aside and the matter is remanded to the Executing Court to decide afresh in accordance with the law.

Disposed off in the above terms. Pending applications, if any, also stand disposed off.

14.03.2023  
jk

( ALKA SARIN )  
JUDGE

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