

CR-8278-2018 (O&M)

240

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8278-2018 (O&M)

Date of decision: May 16, 2023

Rajesh Kumar Kesri

....Petitioner

Versus

Sanjeev Gupta and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sudhir Aggarwal, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 05.10.2018(Annexure P-6) passed by learned Civil Judge (Junior Division), Sohna whereby application filed by petitioner under Order XXI Rule 99 of Code of Civil Procedure, 1908 (for short 'CPC') for restitution of possession, was dismissed.

2. The revision petition is premised on the averments that respondents No.1 and 2 filed suit against defendants No.1 to 3 and also against petitioner/defendant No.4 for seeking declaration to the effect that land described in para-2 of the plaint was a *rasta* for them to approach their land and defendants be restrained from encroaching or raising any sort of construction over disputed land.

2.1. Petitioner/ defendant No.4 challenged the interim order passed by learned trial Court, in an appeal and thereafter, before this Court in CR-1597-2011, which was dismissed on 09.08.2012. During pendency of said challenge before learned Court below as well as before this Court, petitioner did not choose to appear in civil suit. In the suit, name of petitioner was mentioned as Ramesh Kumar Kesri instead of Rajesh Kumar Kesri. He was proceeded *ex parte* vide order dated 03.11.2011, as learned counsel for petitioner did not inform about transfer of case and none appeared on his behalf.

CR-8278-2018 (O&M)

2.2. After dismissal of aforesaid revision in the month of October, 2013, petitioner contacted his counsel and came to know about transfer of case. Petitioner never received any notice from the Civil Court, Sohna. Learned trial Court passed *ex parte* judgment/ decree on 16.08.2016 *qua* relief of permanent injunction.

2.3. Respondents No.1 and 2 preferred an appeal against aforesaid judgment/ decree, in which again, petitioner was proceeded *ex parte* and appeal was allowed vide judgment/ decree dated 26.09.2017. Respondents No.1 and 2 filed execution of judgments/ decrees.

2.4. In execution, wrong name and address of petitioner was mentioned. Learned Executing Court issued warrant of possession directing Id. Executive Magistrate, Sohna to remove encroachment from the *rasta* by taking recourse to the police help. Warrant of possession was executed on 23.04.2018 by demolishing wall of petitioner.

2.5. Petitioner filed an application under Order XXI Rule 99 of CPC for restitution of possession. Vide impugned order dated 05.10.2018 (Annexure P-6), learned Executing Court dismissed the said application.

3. Given the nature of order being passed, facts and circumstances of the case, issuance of notice to respondents is dispensed with, at this stage.

4. I have heard learned counsel for petitioner and perused the case file.

5. What thus emerges is that as on today, *ex parte* judgment/ decree is operating against petitioner. Not only that the same has been satisfied before learned Executing Court below by demolishing wall in question. Needless to say, in case, petitioner succeeds in his application under Order IX Rule 13 of CPC and matter is heard afresh by learned Court below, whatever may be the outcome of the trial, petitioner would have further remedy to either file an appeal and in case *ex parte* judgment against him are set aside and suit is decreed in his favour, the petitioner can seek execution of the same for restitution/ restoration of wall in question at an appropriate stage.

CR-8278-2018 (O&M)

- 6. As far as this Court is concerned, nothing survives for adjudication *qua* impugned order passed by learned Executing Court as the same stands implemented.
- 7. Disposed of, accordingly.
- 8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 16, 2023
mahavir

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