

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 6798 of 2019****Date of Decision: 06.12.2023**

Jagminder (Now Deceased) through his Legal Representatives and Others

... Petitioner(s)

Versus

Prem Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Viraj Gandhi, Advocate
for the petitioner(s).Mr. Nishant Raj, Advocate
for the respondent.**Anil Kshetarpal, J.**

1. Through this revision petition, filed under Article 227 of the Constitution of India, the petitioner assails the correctness of the order passed by the learned Civil Judge (Senior Division), Panipat, on 06.10.2018, whereby the petitioners' execution petition was dismissed.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The respondent-Prem Singh filed a suit for the grant of decree of permanent injunction restraining the defendants from demolishing his wall. It was claimed by the plaintiff that his ancestors had constructed the house about 50/60 years back. The defendants, while contesting the suit, denied the aforesaid assertion and claimed that they have demolished their

old house and they, now, plan to construct a new house. The trial Court

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decreed the plaintiff's suit and restrained the defendants from demolishing the wall AB. The defendants filed an appeal. The First Appellate Court accepted the appeal and dismissed the suit. The operative portion of the judgment dated 11.04.2016 reads as under:-

“12. Resultantly, the appeal is allowed leaving the parties to bear their own costs. The impugned judgment and decree are accordingly set aside and the suit is dismissed. However, it is made clear that the dismissal of suit will not warrant any right to the defendants to raise the disputed wall above the roof level of ground floor in a manner whereby the property abutting towards the side of the plaintiff is damaged in any manner and the defendants shall be duty bound to ensure that no damage is caused to the plaintiff's property at the time of raising the height of common wall. Decree sheet be prepared accordingly. Trial Court record be sent back alongwith a copy of this judgment and appeal file be consigned to the record room.”

4. The petitioners (defendants) filed an application under Order XXI Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) to execute the aforesaid portion of the judgment. The trial Court has dismissed the application on the ground that there is no executable decree in favour of the petitioners.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

6. The learned counsel representing the petitioners contends that the First Appellate Court has permitted the defendants to raise the disputed wall above the roof level of the ground floor in a manner whereby the property abutting towards the side of the plaintiff is not damaged in any

manner. He submits that now the plaintiff is not permitting the defendants to

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raise construction.

7. On the other hand, the learned counsel representing the respondent submits that the First Appellate Court has dismissed the plaintiff's suit, but no decree in favour of the defendants has been passed.

8. This Court has considered the submissions of the learned counsel representing the parties. From the perusal of the decree passed by the First Appellate Court, it is evident that this Court, though, noticed the observation made by the First Appellate Court, but dismissed the plaintiff's execution petition. In fact, the trial Court has come to a conclusion that the observation made by the First Appellate Court is in the shape of a negative mandate thereby not empowering the defendants to compel the plaintiff to do any act or to use force against him.

9. It is evident that the defendants never filed any counter-claim. The suit filed by the plaintiff was dismissed. Thus, in substance, there was no decree in favour of the defendants (petitioners herein). The First Appellate Court passed the decree dismissing the plaintiff's suit.

10. In view of the aforesaid facts and discussion, this Court does not find it appropriate to interfere in the impugned order dated 06.10.2018. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

December 06, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No