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110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2683-2023

Date of Decision: 02.05.2023

Gurnam Singh and others

..... Petitioners

Versus

Mithu Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Suresh Kumar Aneja, Advocate,
for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the impugned award dated 13.02.2023 (Annexure P-4) passed by the Civil Judge (Senior Division), Fazilka, whereby the application filed by the respondent/decreed holder under Order 21 Rule 32 of the Code of Civil Procedure has been allowed.

Learned counsel for the petitioners has submitted that the Court below has wrongly passed the order qua petitioner No.1/plaintiff interfering into the possession of the respondent-decreed holder, without there being any evidence led by him in that regard. Moreover, petitioners No.2 to 11 were not even party to the proceedings in the original suit, therefore, the properties belonging to them could not have been sold and the action against them could not have been initiated under Order 21 Rule 32 of the Code of Civil Procedure. Therefore, the impugned order passed by the Court below is totally wrong.

Having heard learned counsel for the petitioners and having

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perused the case file, this Court finds that this is not even in dispute that the counter claim of the respondent herein was decreed against petitioner No.1 herein; being the sole plaintiff in the original suit; and the decree of permanent injunction was passed restraining petitioner No.1 from interfering into the possession of the suit property. As per the assertions of the respondent-decree holder, the petitioners herein violated the decree by erecting the boundary wall and the fencing of the suit property, and thereby; deprived the respondent-decree holder of the possession of the property in violation of the decree in his favour. The fact of violation of the decree has been proved by the respondent-decree holder by leading evidence, including the statement of the co-villager, who have duly proved the facts before the Executing Court. On the basis of the said evidence only, the finding on the issue in this regard was recorded in favour of the respondent-decree holder. Hence, it is obvious that the petitioners herein have violated the decree passed by the Trial Court.

Otherwise also, the very stand adopted by the petitioners before the Executing Court is that they are in possession of the suit property. Once the petitioner No.1 has lost in civil suit and the respondent-decree holder has been found to be in possession of the suit property resulting into a decree of permanent injunction in his favour and against petitioner No.1; then any assertion on behalf of petitioner No.1 being in possession, obviously, shows that he had entered into the possession of the suit property after passing of the decree. Therefore, there is a violation of the decree, even as per the assertions made by the petitioners herein.

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Although, the learned counsel for the petitioners has submitted that the petitioners No.2 to 11 were not even parties to the original suit, however, there is nothing on record even to remotely suggest that these petitioners are claiming any right, title or interest in the property in their independent capacity. They are only the family members of petitioner No.1, who has taken over the possession after the decree was passed against him. Therefore, it is not mandatory that petitioners No.2 to 11 should be heard separately even qua violation of the decree; as such. It is obvious that the violation was the joint effort of the petitioners in the aid and for assistance of petitioner No.1 only. Hence, the Court below has rightly passed the order against them, as well.

Moreover, at this stage, the Court below has only ordered vacation of the possession by the petitioners. The stage of arrest and attachment of the property under Order 21 Rule 32 of the CPC is yet to arrive at. There is no order of attachment; as such, as of today, even against petitioners No.2 to 11. They are free not to violate the decree; as such, and avoid the attachment of their properties, if any. Therefore, the issue of their separate identity is not even involved, at this stage.

In view of the above, finding no merit in the present revision petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

02.05.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No