

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

CWP-13504-2023 (O&M)

Date of Decision: 12.07.2023

R.D. Devgan

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Kulwant Kaur, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

CM-10236-CWP-2023

Allowed as prayed for.

Main case

The petitioner has approached this Court for quashing/setting aside the impugned order dated 31.01.2023 passed by the learned Civil Judge (Jr. Division), Dera Bassi resulting into issuance of warrants of possession against the property of the petitioner by ignoring the order dated 31.05.2019 passed by his learned Predecessor and directed/executed demarcation report dated 17.10.2019.

It has been contended by learned counsel for the petitioner that the petitioner purchased 7 marlas of land (0-6) (0-1) and got registered deed executed of 2 marlas of land through General Power of Attorney of owner Gurpreet Singh son of Manmohan Singh and thereafter, he was put in possession of the same. It is contended that vide jamabandi for the year 1999-2000 and 2014-15, ownership and possession of the petitioner was proved in the revenue record. It is contended that after getting the site plan sanctioned, he got constructed two shops and got the electricity connection and thereafter, respondents No.3 and 4 filed joint Civil Suit No.11 of 2007

for possession alongwith injunction application claiming possession of the suit property. She has contended that the petitioner was proceeded *ex parte* and thus, joint civil suit was decreed vide judgment and decree dated 17.10.2012. It is submitted that the respondents misled the Court as the petitioner was proceeded *ex parte* and hence, suit was decreed. She has further submitted that the petitioner thereafter filed an appeal assailing the judgment and decree dated 17.10.2012, but the learned Additional District Judge, SAS Nagar, Mohali dismissed the same upholding the order of the learned trial Court vide judgment/order dated 25.04.2014. She has submitted that the orders of both the Courts below were assailed by the petitioner by way of filing RSA-4024-2014 and the same was dismissed by this Hon'ble Court vide judgment dated 16.08.2018. She has submitted that respondents No.3 and 4 thereafter filed Execution No.203 of 2018 in which which the petitioner filed objections as well, but the learned Executing Court did not appreciate the same and thus declined the same. It is submitted that the learned Civil Judge vide order dated 31.05.2019 directed to file demarcation report on 02.08.2019 executed through Tehsildar, Dera Bassi. She has submitted that in the demarcation report dated 17.10.2019, it was found that shops in dispute do not fall in Khasra No.9//6/2/4/1 and 6//3/4/21. She has submitted that in view of the demarcation report, it is crystal clear that shops of the petitioners do not fall in Khasra No.9//6/2/4/1 and 6//3/4/21 and thus, warrants of possession could not have been issued by the Civil Judge for taking possession. She has further contended that the impugned order dated 31.01.2023 passed by the learned Civil Judge and order dated 24.05.2023 passed by the learned Additional District Judge, are totally unsustainable in the eyes of law and thus, deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that joint Civil Suit No.11 of 2007 was filed by respondents No.3 and 4 for possession alongwith injunction application regarding the property in dispute. The petitioner was proceeded *ex parte* in the same. After hearing counsel for the plaintiff and perusing the record, learned Civil Court decreed the suit vide judgment and decree dated 17.10.2012. However, the petitioner assailed the same by way of filing of Appeal No.164 dated 17.12.2012 before the learned Additional District Judge, SAS Nagar, Mohali. Learned Appellate Court after hearing both the sides, dismissed the appeal and thus, the judgment and order dated 17.10.2012 was upheld vide order dated 25.04.2014. Against this, petitioner preferred RSA No.4024 of 2014 before this Court and the same was also dismissed vide order dated 16.08.2018. Thus, the orders of both the Civil Courts were upheld upto the High Court. The respondents-decree holders filed an execution application in which warrants of possession were issued by the Executing Court. The learned Executing Court heard both the sides and the objection filed by the petitioner were duly considered by the learned Civil Judge. It was observed that the matter has been finally decided on merits by both the Civil Courts, which has been upheld by the High Court as well, as Regular Second Appeal filed by the petitioner was dismissed on merits. It is further observed that the site plan (Ex.P-8) was upheld by the Court and the Executing Court cannot go beyond the decree, thus, objections raised by the petitioner were found to be totally without any merits and hence, learned Civil Judge declined the same vide impugned order dated 31.01.2023. The petitioner assailed the same by way of filing

appeal before the learned District Judge. Both the parties were duly heard and case was again considered by the Appellate Court as well. It has been found that the arguments raised by the petitioner had already been appreciated by both the Civil Courts and the High Court and had been rejected on merits. As per the settled proposition of law, the Executing Court cannot go beyond the decree and thus, in the opinion of this Court, both the Courts below have rightly declined the contentions raised by the petitioner. Hon’ble Supreme Court in M/s Century Textiles Industries Ltd. vs. Deepak Jain and another, Law Finder Doc Id# 183181 has observed as under:-

“13. There is no quarrel with the general principle of law and indeed, it is unexceptionable that a court executing a decree cannot go behind the decree; it must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made.”

In view of the overall facts and circumstances and the law settled, this Court does not find any infirmity in the view taken by the Courts below in passing the impugned orders and thus, there is no perversity in the impugned order. Resultantly, this petition being devoid of any merit, is hereby dismissed.

12.07.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No