

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

117

CR No.3922 of 2023

Date of Decision: 14.07.2023

Satbir and Ors.

.....*Petitioners*

Versus

Dharambir

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Gaurav Gupta, Advocate
for the petitioners.

GURBIR SINGH, J (ORAL)

1 Challenge in this revision petition is to impugned order dated 20.05.2023 (Annexure P-1) passed by the learned Civil Judge (Jr. Divn.), Faridabad, in Execution Petition No.142 of 2021, whereby the objections filed by the petitioners was dismissed and warrant of possession of suit property has been issued.

2 Shorn unnecessary details, the facts which are necessary to dispose of the revision petition are that the respondent herein filed a civil suit for permanent and mandatory injunction against the petitioners on the ground that he is the owner in possession of a residential house and the petitioners be restrained from interfering in his possession and mandatory injunction to remove the illegal construction. The petitioners filed a counter claim with a prayer that the respondent should be directed to dismantle the gate affixed and plaintiff be directed to vacate the equal share of counter claimant in the suit property and he take share in the property situated in

village under Lal Dora. The said suit was decreed and counter claim was dismissed, the appeal was dismissed and Regular Second Appeal was also dismissed. Thereafter, the petitioners filed the SLP and the same was also dismissed by the Hon'ble Apex Court. The respondent had filed the Execution Petition and petitioners filed the objections which were dismissed. The said order is assailed in the revision petition.

3 Learned counsel for the petitioners submits that in the decree dated 08.04.2019, the learned Civil Judge (Jr. Divn.) Faridabad, also granted liberty to file a suit for partition to the petitioners and the same is also filed by them which is still pending for the last six years. So, possession cannot be handed over to the respondent. The proceedings of the execution are required to be straightway dismissed.

4 I have heard the submissions made by learned counsel for the petitioners and I have given thoughtful consideration that decree dated 08.04.2019 is as under:-

‘It is ordered that the suit of the plaintiff succeeds and the same is partly decreed whereas the counter claim filed by the defendants is dismissed. The defendants are directed to handover the physical vacant possession of part of suit property marked as EFGH in the site plan, over which they have illegally made construction of shops during the pendency of the suit within three months. However, it is further clarified that if the defendants have any objection regarding the settlement, then they are having liberty to file a suit for partition.’

5 The decree is very specific and unambiguous. It is duty of the Court to execute its decree in its letter and spirit. The respondent is entitled for possession of part of suit property marked as EFGH in the site plan, over which they have illegally made construction of shops during pendency of the

case, so petitioners cannot resist the same. The liberty is given to the petitioners to file a suit for partition and same is already filed. Pendency of the suit for partition is no ground to stay the execution or dismiss the execution. The objections are baseless and there is no illegality in the order passed by the learned Executing Court. The petition is without merit and the same is hereby ***dismissed.***

14.07.2023
jyoti3

(GURBIR SINGH)
JUDGE

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