

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.4668 of 2023(O&M)

Reserved on: 21.08.2023

Date of Order: 15.09.2023

Hukam Singh (Deceased) through LR's and others

.Petitioners

Versus

Karan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R.Yadav, Advocate
for the petitioners.

ANIL KSHETARPAL, J

1. This is Judgement Debtor's revision petition against the orders passed by the Executing Court on 31.07.2023, 20.07.2023 and letter dated 11.08.2023.

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

3. The petitioner filed Regular Second Appeal No.2646 of 2016 to challenge the correctness of the judgments passed by the courts below. In fact, two regular second appeals were filed, one by the petitioners and others, whereas the second was filed by Sh. Rajpal. defendant no.5 in the suit.

4. The plaintiff had filed a suit for possession by way of demolition of an unauthorized encroachment over his property. On 29.11.2018, with the consent of the learned counsel representing the parties, the appeals were disposed of with the following observations:-

“Learned counsel for the parties are ad-idem that let a fresh demarcation be got carried out through “theodolite” (Total Station Machine) and parties would be free to join. The demarcation shall be carried out after issuing notice to both the parties. However, once the demarcation has been carried out through “theodolite” in the presence of the parties, they shall not be entitled to raise any objection. Of course, the parties would be at liberty to point out any error in the demarcation to the concerned officials. The demarcation would be carried out by an experienced Naib Tehsildar, who would be accompanied by concerned Kanungo and Halqa Patwari with the entire record.”

5. Thereafter, the decree holder filed execution petition in which the Executing Court got the property demarcated with the help of GPS machine/theodolite. Once again it was found that the petitioners have encroached upon 529 sq. yds. area of the decree holders. The demarcation was carried out in the presence of the parties and no objection to the correctness of the aforesaid demarcation was pointed out to the Naib Tehsildar. However, the petitioners filed objection petition before the Executing Court which has been dismissed by the Court on the ground that the petitioner has no locus to raise the objection on the report of the Local Commissioner. Pursuant thereto, directions have been issued to deliver possession.

6. This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

7. The learned counsel representing the petitioner while drawing the attention of the court to the copy of the aks-shajra and the copy of the lay

out plan prepared by the Local Commissioner submits that there is some variation and therefore, the court should interfere. He submits that the Executing Court has wrongly dismissed the objection petition. He also relies upon an order passed in **Raj Singh and others vs. State of Haryana and others (CWP-9319 of 2018 decided on 04.07.2022)**.

8. This court has considered the submissions of the learned counsel representing the petitioner and examined the paper book.

9. The civil suits are required to be disposed of on preponderance of probabilities. The standard of proof required before the civil court is based upon preponderance of probabilities and not on the touch stone of proving beyond reasonable doubt. Here is a case where the decree holders filed a suit in the year 2006 alleging that the Judgment Debtors have unauthorizedly and illegally encroached upon their part of land. In order to know the factual position, a Local Commissioner i.e. revenue official was appointed to demarcate the property and on that basis the suit was decided. However, in second appeal, the learned counsel representing the parties made a statement to the effect that the fresh demarcation be carried out with the help of “theodolite” i.e. GPS based machine. The aforesaid demarcation has once again be carried out.

10. In such circumstances, now there is no scope for interference particularly when the parties had undertaken not to file objections.

11. As far as the orders passed by the Division Bench in the writ petition, it may be noticed that the dispute with regard to a passage came up before the High Court. The High Court refused to interfere with the impugned order passed under Section 42 of the Consolidation of Holdings Act, 1962, by the Commissioner, Gurugram Division, Gurugram.

12. Even review application was dismissed.
13. Keeping in view the aforesaid discussion, finding no merit, the revision petition is dismissed.
14. All the pending miscellaneous applications, if any, are also disposed of.

September 15, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO