

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CM-18237-CII-2023 in/and
CR-5727-2023

Date of Decision : 04.10.2023

Shyam Sunder

.....Petitioner

Versus

Naresh Mangla (deceased) through his LRs and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Sudhir Aggarwal, Advocate for the applicant/petitioner.

NAMIT KUMAR, J. (ORAL)

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Prayer in the instant application filed under Section 151 of CPC is for preponing the date of hearing fixed in the main case from 02.11.2023 to some early date.

For the averments made in the application, the same is allowed and the main case is taken up on board today itself.

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1. The instant revision petition has been preferred by the petitioner under Article 227 of the Constitution of India impugning the order dated 11.09.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Palwal whereby an application filed by the petitioner/JD No.1 under Section 151 and 152 of CPC for amendment in the judgment and decree has been dismissed.

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2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that the petitioner has filed a suit for permanent injunction against respondent No.1 not to encroach the Municipal Corporation Road and to demolish the disputed wall. Respondent No.1 filed counter claim in the suit alleging that the petitioner by raising construction over first and second floor of the house, encroached the area owned by respondent No.1 in the common wall. Learned Additional Civil Judge (Senior Division), Palwal vide judgment and decree dated 26.02.2014 dismissed the suit filed by the petitioner and decreed the counter claim filed by respondent No.1 and directed the petitioner to remove the entire illegal construction raised by him on the common disputed wall AB or to remove the encroachment made by him to the extent of share of the defendant on the said wall or to restore the common wall to its original position. The petitioner has filed an appeal against judgment and decree dated 26.02.2014 which was also dismissed by learned First Appellate Court vide judgment and decree dated 30.08.2016. Thereafter, respondent No.1/DH filed execution petition before the Executing Court. The petitioner has also filed objections to the execution which were dismissed by the Executing Court vide order dated 09.05.2023 and direction was issued to respondent No.2 (Municipal Council, Palwal through its Executive Officer) to remove the entire illegal construction raised by the petitioner and to remove the encroachment. Thereafter, on 31.05.2023 the petitioner suffered a statement that 10 days time be given to him for

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compromise on which the Executing Court granted 15 days time to the petitioner to remove the entire illegal construction raised by him over the common wall. In pursuance to order dated 31.05.2023 passed by the Executing Court, the petitioner has removed the encroachment over the common wall and submitted an undertaking before the Executing Court along with application under Section 151 and 152 of CPC for amendment in judgment and decree. The said application has been dismissed by learned Executing Court vide order dated 11.09.2023. The relevant para of the said order reads as under:-

“6. By way of present application, JD no.1 has sought correction in the judgment and decree on the ground that details of wall ‘AB’ in width and length, have not been mentioned in the judgment and decree sheet. It is pertinent to mention here that present is an execution petition and Executing Court has to execute the decree as it is and cannot go behind the decree. The instant application is not maintainable being filled before Executing Court, hence, the same is hereby dismissed.

7. JD no. 1 had also filed undertaking that in compliance of order dated 31.05.2023 and as per judgment and decree dated 26.02.2014, he has removed the encroachment. The undertaking has not been supported by duly sworn affidavit. Learned counsel for DH has not confirmed that JD no. 1 has complied with the judgment and decree dated 26.02.2014. Therefore, it can not be said that JD no. 1 has complied with judgment and decree dated 26.02.2014 in letter and spirit. Moving application before this Executing Court for correction of judgment and decree along with undertaking shows conduct of JD no.1 that he is adopting every possible tactic to avoid execution of judgment and decree dated 26.02.2014. As no warrant of execution was issued after moving the instant application, therefore, no order regarding recall of warrant is required to be passed. The instant application stands disposed of.”

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3. Aggrieved against the order dated 11.09.2023 passed by learned Additional Civil Judge (Senior Division), Palwal, the instant revision petition has been filed.

4. Learned counsel for the petitioner has argued that in pursuance of order dated 31.05.2023 passed by learned Executing Court, the petitioner has removed the entire encroachment which was on the side of respondent No.1 and left 12” width area of the wall free for respondent No.1. Thus, the petitioner had complied with the judgment and decree dated 26.02.2014. However, learned Executing Court has not appreciated this fact and wrongly rejected the application filed by the petitioner under Section 151 and 152 of CPC vide impugned order dated 11.09.2023.

5. I have heard learned counsel for the petitioner and perused the relevant documents.

6. Admittedly, the suit filed by the petitioner for permanent injunction was dismissed by learned Additional Civil Judge (Senior Division), Palwal vide judgment and decree dated 26.02.2014 and appeal filed by the petitioner was also dismissed by learned First Appellate Court vide judgment and decree dated 30.08.2016. Thereafter, respondent No.1/DH filed execution petition before the Executing Court. The petitioner has also filed objections to the execution petition which were dismissed by learned Executing Court vide order dated 09.05.2023 and directions were issued to respondent No.2 to remove the entire illegal construction raised by the petitioner and to remove the

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encroachment. Vide order dated 31.05.2023 passed by learned Executing Court, 15 days time was given to the petitioner to remove the entire illegal construction raised by him over the common wall. The suit filed by the petitioner was decided on 26.02.2014 and now after a gap of more than 08 years, he has filed an application under Section 151 and 152 of CPC for amendment in the judgment and decree dated 26.02.2014 in the execution proceedings on the ground that details of wall ‘AB’ in width and length, have not been mentioned in the judgment and decree sheet. The conduct of the petitioner clearly shows that he is deliberately delaying the execution of judgment and decree dated 26.02.2014.

7. The impugned order dated 11.09.2023 passed by learned Additional Civil Judge (Senior Division), Palwal is quite detailed and well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.
8. Finding no merit in the revision petition, the same stands dismissed.

04.10.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No