

261

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-317-2023

Date of Decision : 28.03.2023

INDER RAJ

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Priyanshu Kamra, Advocate and
Mr. Mohit Shukla, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana
for respondents No. 1 to 4.

Mr. Baldev Singh Dhillon, Advocate
Mr. Hardeep Singh Dhillon, Advocate
for respondents No. 5 to 7.

SURESHWAR THAKUR, J. (Oral)

1. The present petitioner instituted a civil suit bearing No.288/2010/2013 before the Civil Judge, Junior Division, Ambala. In the civil suit (supra), he claimed the makings of a decree of permanent prohibitory injunction hence for restraining the defendants from interfering with the property, which is similar to the property, as detailed in the instant petition. As revealed by Annexure P-6, an affirmative decision was recorded on the said civil suit by the learned Civil Judge concerned.

The operative part of the verdict recorded on the civil suit

(supra), is extracted hereinafter.

“.....Keeping in view the foregoing discussion the suit of the plaintiff is hereby decreed with cost as the plaintiff has successfully established his possession over the land in question and it has also established that defendant interfered into the peaceful possession of the plaintiff. The defendants are hereby restrained from encroaching upon any portion of the bara in question and they are further restrained from taking possession of any portion of the bara without due process of law.....”

3. The suit khasra numbers in respect whereof, an affirmative decision was recorded by the learned Civil Judge concerned, are enclosed in Khasra No. 162 and 163, and, they are situated in village Mandhour, Tehsil and District, Ambala.

4. Tritely since only in respect of the above suit khasra numbers, an affirmative decree was made by the learned Civil Judge concerned. Therefore, the decree holder-plaintiff instituted an application under Order 21 Rule 32 CPC hence seeking for the initiating of proceedings against the Judgment Debtors, but on account of theirs willfully disobeying the verdict, as becomes enclosed in Annexure P-6. However, on the basis of a statement made by the learned counsel for the judgment debtor, the learned executing Court concerned, on 11.05.2018, permitted the decree holder-plaintiff to withdraw the execution petition, thus, the said execution petition bearing No. EXE/148/2016 was dismissed as withdrawn.

5. Though the order made on 11.05.2018, was made on the statement of the counsel for the judgment debtor, and, is to be construed to

be the acceptance by the defendants of the verdict embodied in Annexure

P-6, rather by the learned Civil Judge concerned, and obviously thereto conclusivity has to be assigned. Through the said verdict(s), the defendants/judgment debtors were ever restrained from interfering with the possession of the plaintiff over the above designated khasra numbers. However, it appears that subsequently a fresh cause of action may have accrued in favour of the judgment debtors, and, which may possibly create a fresh dispute in respect of any alleged interference, being made at the instance of the judgment debtors-defendants, thus, allegedly over the above stated khasra numbers.

6. The inference qua the said possibility of a dispute emerging hence on accrual of any subsequent cause of action, thereby may be causing/sparking lawful disobedience, rather at the instance of the judgment debtors-defendants obviously in respect of Annexure P-6, becomes rested, on a demarcation report, as, made by the revenue officer, and, which is enclosed in Annexure P-4.

7. Therefore, it appears that in the garb of the said demarcation report, the plaintiff-decree holder is apprehending, that subsequently there may be interference over his possession over the above stated khasra numbers. Thus, through the institution of the instant writ petition, he prays for relief, that the said demarcation report be quashed and set aside, and, this Court may proceed to order for a fresh demarcation being made of the relevant khasra numbers. However, the above asked for mandamus cannot be granted, as thereupon, this Court would untenably be exercising the jurisdiction which otherwise is vested in the Appellate Authority concerned, wherebefore whom an appeal may be reared at the instance of the aggrieved rather from the demarcation report, as comprised in

Annexure P-4. Therefore, this Court declines the granting of the above asked for mandamus but reserves liberty to the petitioner to rear an appeal before the competent Appellate Authority, whereby he may challenge the demarcation report, as carried in Annexure P-4.

8. Disposed of.

(SURESHWAR THAKUR)
JUDGE

28.03.2023
kavneet singh

(VIKRAM AGGARWAL)
JUDGE

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