

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

CR-7046-2023

Date of decision: 22.11.2023

Bashiran and another

.... Petitioners

Versus

Ali Mohd.

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Imran Farooqi, Advocate, for the petitioners.

GURBIR SINGH, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC by the petitioners (hereinafter called “the judgment debtors/defendants”) for setting aside the impugned order dated 10.10.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Malerkotla vide which their evidence was closed in case bearing No. CMA No.61 of 2019, titled as *Ali Mohd. Versus Bashiran and another*, and also order dated 25.10.2023 (Annexure P-4), vide which the application filed by them for recalling the order dated 10.10.2023 has been dismissed.

2. The brief facts, as culled out from the petition, are that respondent, (hereinafter called “the decree-holder/plaintiff”) filed a civil suit for declaration to the effect that rapat No.281, dated 11.06.2010, vide which land measuring 0-4 biswas comprised of Khewat No.135/132, Khatauni

No.336, bearing Khasra No.200 min/0-4, Gair Mumkin Pahi, situated at Village Mehboobpura, Tehsil Malerkotla as per jamabandi for the year 2007-08, was ordered to be converted into plot, being not only erroneous but also contrary to the law, devoid of factual basis, unlawful and unenforceable qua plaintiff's right and also suit for permanent injunction restraining the defendants from raising any sort of construction and encroaching upon pahi and for peaceful access to his adjacent chah land comprised of Khewat No.60/58, Khatauni No.177, Khasra No.199/0-11 situated in said village Mehboobpura. The said suit was decreed vide judgment and decree dated 08.01.2018.

3. Despite the aforesaid judgment and decree, JD/defendant No.1 in connivance with JD/defendant No.2 raised construction over the Gair Mumkin Pahi in dispute and constructed a Gram Panchayat room.

4. On 22.02.2019, the plaintiff-decree holder moved an application (Annexure P-1) under Order 21 Rule 32 CPC for attachment and sale of property which is possession of Judgment Debtors/defendants and to remove the illegal construction raised upon the suit land and also urged for their civil imprisonment for disobedience of said judgment and decree.

5. The JDs filed reply and objections under Section 47 CPC to said application (Annexure P-2) taking preliminary objection that said judgment and decree has not attained finality as against it an appeal is pending before the appellate Court at Sangrur. On merits, it was submitted that there exists no alleged pahi in Khasra No.200 min/0-4. JD No.2 is owner in possession of

Khasra No.200, which was earlier a plot and thereafter, JD No.2 constructed a scheduled caste Dharamshala with the funds of Punjab State Government, as per law. It was further submitted that in fact there was a mistake in the jamabandi and khasra girdawari, which was later on rectified by JD No.2 from the revenue authorities, vide rapat No.281. Even in Aks Latha and in Musavi, Khasra No.200 has been shown as plot only. Moreover, with regard to said pahi in Khasra No.200, earlier the uncle of the plaintiff had also filed a suit titled as *Wali Mohd. Versus Gram Panchayat*, which was dismissed in default by the Civil Judge (Junior Division), Malerkotla vide order dated 21.07.2014. In that suit, interim injunction was sought and same was declined by this Court. However, the plaintiff knowing fully well about the dismissal of earlier suit, has filed the present suit on the same grounds. Under the garb of present frivolous litigation, the plaintiff-decree holder has halted the construction work, causing damage to the construction material and the government funds.

6. The case was fixed for the evidence of respondents-JDs, but despite availing numerous opportunities, they failed to lead evidence and vide order dated 10.10.2023, the trial Court closed their evidence. An application filed for recalling the said order was also dismissed vide order dated 25.10.2023. By way of present revision petition, said orders are being challenged before this Court.

7. Learned counsel for the petitioners has argued that petitioner/JD No.1 wants to examine herself, but since she was undergoing treatment for breast cancer and was hospitalized, she could not appear in the Court to make

a statement. This compelling circumstance has resulted in repeated adjournments in the case. She is presently undergoing treatment at Tata Memorial Centre, Homi Bhabha Cancer Hospital at Sangrur. A copy of her medical record is annexed as Annexure P-5.

8. I have heard the submissions of learned counsel for the petitioners and have gone through the paper book.

9. In the impugned order dated 25.10.2023, learned Executing Court has held that last opportunity was granted to the respondents-JDs to conclude the evidence way back on 04.11.2022. No witness of the JDs was present on three consecutive dates i.e 12.09.2023, 27.09.2023 and 10.09.2023. Even after availing 20 effective opportunities to lead evidence, they failed to conclude their evidence.

10. The plea taken by the petitioner-JD No.1 is that she was undergoing treatment for cancer. A perusal of Annexure P-5 reveals that it was issued on 31.03.2020 and she has been advised to visit OPD after three months, but there is no record after 29.07.2020 that when she attended the hospital for taking any treatment. There is no record that she was hospitalized recently. It cannot be said that she could not testify as a witness thereafter. No doubt, she was diagnosed, a late stage cancer on 31.03.2020, but that cannot be considered a ground to take the court for a ride. Petitioner No.2 is a Gram Panchayat, which is represented through its Sarpanch. There is no explanation why none has appeared on behalf of the Gram Panchayat and why evidence could not be led for such a long time. It is application

under Order 21 Rule 32 CPC. If alleged violator does not lead evidence then Court is left with no other option but to close the evidence.

11. In view of above, I do not find any illegality and irregularity in the orders passed by learned court below. The petition is without merit and it is dismissed as such.

(GURBIR SINGH)
JUDGE

22.11.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No