

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

125

CR-721-2024 (O&M)

Date of Decision : 07.02.2024

LAKHA SINGH & ANR.

.... Petitioners

VERSUS

MUKHTIAR SINGH (SINCE DECEASED) THROUGH LRS & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Bhardwaj, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

1. This is a civil revision petition under Article 227 of the Constitution of India challenging the order dated 28.11.2023 (Annexure P-5) whereby the objections filed by the petitioners in Execution Application No.54/2020 titled as 'Mukhtiar Singh through LRs and another v/s Surjit Singh and others' were dismissed and the order dated 25.01.2024 (Annexure P-9) vide which the execution petition stands dismissed as withdrawn being fully satisfied as the possession had already been handed over to the decree holder.

2. Learned counsel for the petitioners has vehemently contended that demarcation was not conducted as per the High Court Rules and Orders and that a fresh demarcation report ought to have been sought for before handing over possession to the decree holder. It is further the contention that the demarcation report relied upon by the Trial Court in the judgment and

decree dated 07.10.2017 was not as per the High Court Rules and Orders and hence could not have been relied upon.

3. In support of his contentions, learned counsel for the petitioners has relied upon the judgment passed by the Supreme Court in the case of **Ram Lal & Ors. V/s Salig Ram & Ors. [(2019 (1) RCR (Civil) 969)]** and orders passed by this Court in **Sahab Singh & Ors. V/s State of Haryana & Ors. [(2021 (1) PLR 20)]**; **Krishana Nand V/s Hans Raj Sharma [(2018 (2) Law Herald 1029)]** and **Haryana Wakf Board V/s Asha Rani & Anr. [(2016(4) Law Herald 3458)]**.

4. Heard.

5. In the present case the decree holder-respondents filed a suit for possession of Killa No.617/5 min. The suit was decreed vide judgment and decree dated 07.10.2017. In the said judgment reliance was placed by the Trial Court on the demarcation conducted by the Kanungo. After relying on the said report, the Trial Court came to the conclusion that the encroachment was on 1 Kanal and 16 Marlas and not on 2 Kanals and 2 Marlas and hence the suit was decreed for 1 Kanal and 16 Marlas. It is an admitted position that the said judgment and decree has since attained finality as the appeal preferred by the defendant has also been dismissed. Learned counsel for the petitioners is not in a position to inform the Court as to whether any regular second appeal was preferred or not. He, however, states that the said judgment and decree has since attained finality. The Trial Court in the judgment and decree dated 07.10.2017 has observed as under :

“.....the report prepared by the Local Commissioner Gurnam Singh, Kanungo which is perfectly legal and valid as he has mentioned all the necessary points in the demarcation report and he had taken the revenue record from Patwari on the basis of the order passed by this Court and rather the conduct of defendants who had opposed the demarcation by Kanungo, reveals that they intentionally did not want the demarcation to be conducted even after passing of order by this Court and the Kanungo was left with no other option but to seek the police held for conducting demarcation. Even the demarcation was objected by the defendants thereafter by calling press reporter to restrain the Kanungo from demarcating the property in an apprehension that there illegal possession would come out in the demarcation report. As such demarcation report prepared by Gurnam Singh, Field Kanungo on the basis of order passed by this Court is validly conducted as per the Rules of demarcation by putting best efforts by the Kanungo.....”.

6. The Executing Court while dismissing the objection petition held that there was a detailed demarcation report on the basis of which the judgment and decree dated 07.10.2017 was passed. The said judgment and decree, admittedly, has since attained finality and what the judgment debtor

is now wanting is to reopen the entire question of encroachment by filing objections. Once the Trial Court had come to a conclusion that there was encroachment only on 1 Kanal and 16 Marlas on the basis of the demarcation report, which judgment and decree has since attained finality, there is no question of reopening the same in execution proceedings. The Executing Court has rightly dismissed the objections vide order dated 28.11.2023 and now the decree stands fully satisfied. The judgments relied upon by the learned counsel for the petitioners are of no help to the petitioner as the same are distinguishable on facts.

7. In view of the above, the present petition is devoid of any merits and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

07.02.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*