



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

ESA-17-2019 (O&M)

Date of decision: 23.07.2024

Surender Kumar

....Appellant

Versus

Municipal Committee and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ajay Jain, Advocate for the appellant

Mr. N.S.Gill, Advocate for respondent no.5 and 6

ANIL KSHETARPAL, J (Oral)

1. The appellant before this Court is one of the holders of a civil court decree on 06.09.2000. The civil suit filed by the appellant was decreed to the following effect:-

“It is ordered that a decree for possession of the property shown by red colour in site plan Ex.P26 prepared by the Local Commissioner, encroached upon by defendants during pendency of the suit is hereby passed in favour of the plaintiffs and proforma defendants and against the contesting defendants Municipal Committee. Thereafter, a decree for permanent injunction is passed whereby contesting defendants are restrained from interfering with possession of the plaintiffs and proforma defendants over the disputed property shown by letter ABC in site plan Ex.P5 or to raise any construction thereon. Parties are left to bear their own costs.”

2. The correctness of the aforesaid decree was upheld in first appeal as well as in the Regular Second Appeal. The appellants filed the execution petition. Certain residents of the locality filed objections claiming that the decree dated 06.09.2000, has been obtained in



collusion with Municipal Council, Narnaul. The Executing Court allowed the objection petition while dismissing the appellant's execution petition. The correctness of the aforesaid order passed by the Executing Court was challenged in appeal, which has been dismissed on the ground that no appeal is maintainable. The court has assumed that the execution petition was filed under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

3. Learned counsel representing the appellant submits that the execution petition was filed under Order XXI rule 11 CPC and not under Order XXI Rule 32 CPC. He further submits that third party objections were filed by the respondents under Order XXI Rules 97, 98, 99 and 101 CPC. Hence, the First Appellate Court has erred in dismissing the appeal on the ground of maintainability.

4. Per contra, the learned counsel representing the respondents submits that public property is sought to be taken away pursuant to a civil court decree, which was passed by the court as the Municipal Council did not properly contest the same. He submits that there was collusion between the plaintiff and the officials of the Municipal Council.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. The limited issue before this Court is with respect to the correctness of the impugned order passed by the First Appellate Court. In this case, the objections were filed under Order XXI Rules 97, 98, 99,



101 CPC by the third party objectors. Hence, the appeal was maintainable under Order XXI Rule 103 CPC.

7. Consequently, the impugned order passed by the First Appellate Court is set aside while restoring the appeal to its original number. The First Appellate Court is requested to decide the appeal on merits. The parties through their learned counsels are directed to appear before the First Appellate Court on 20.08.2024.

8.. The appeal stands allowed.

9.. All the pending miscellaneous applications, if any, are also disposed of.

23.07.2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No