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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1767-2023 (O&M)
Date of decision : 21.11.2024

AMARNATHPetitioner

Versus

SANTOSH DEVI AND ORS. ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Nitish Sharma, Advocate
for the petitioner.

Mr. Varun Gupta, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Judgment Debtor is in revision against order dated 14th of February, 2023 whereby the Executing Court appointed Local Commissioner to remove the encroachment in order to carry out the mandate of a decree suffered by the petitioner.

2. Parties herein were in the thick of *lis* by way of two cross-suits which were decided together by a common judgment and decree dated 5th of March, 2008.

3. In execution application filed by the Decree Holders, Executing Court passed the impugned order appointing Local Commissioner to get the encroachment removed in terms of the decree.



4. Ld. Counsel for the petitioner while raising grievance against the impugned order, submits that the Executing Court wrongly directed Local Commissioner to remove encroachment without asking him to ascertain as to whether the construction was within the area owned by the petitioner/Judgment Debtor. He submits that prior to removal of encroachment, Executing Court ought to have ascertained as to whether the construction raised was within the area owned by the Judgment Debtor i.e. 130.90 Square Yards.

5. Per contra, counsel for the respondents submits that both the parties filed their respective suits agitating their respective claims. On the basis of the evidence led before the Trial Court, a decree has been passed. It is the decree which needs to be executed. The Trial Court categorically found that the construction in the shape of ABCD in site plan in the red colour annexed to the plaint was the encroachment and ordered removal thereof and thus, the Judgment Debtor/petitioner in execution cannot be allowed to agitate as to whether the said construction was within the land owned by him or not.

6. I have heard counsel for the parties and have gone through records of the case.

7. Counsel for the petitioner is not in position to dispute that so far as the judgment and decree dated 5th of March, 2008 is concerned, the same has attained finality between the parties and the rights of the parties got

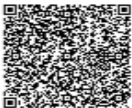


crystallized in terms thereof. The operative part of the relief granted reads as under :

“19. In view of foregoing discussion on issue No.1, present suit is hereby decreed with costs restraining the defendants from interfering in the street shown by letters ABCD in red colour in site plan annexed to the plaint. The defendants are also restrained from raising construction thereon and also not to create any obstruction in the use of street. Defendants are also directed to remove the encroachment made on the street in the shape of latrine shown by letters ABCD in site plan in red colour annexed to the plaint within one month of date of order. Decree-sheet be drawn up accordingly. File be consigned to record room after due compliance.”

8. In the execution filed by the Decree holders, Executing Court strictly in terms of the decree appointed Local Commissioner to carry out the mandate thereof by removing encroachment in form of construction shown in letters ABCD in the site plan. Trite it is that the Executing Court cannot go behind the decree. The plea raised by counsel representing the Judgment Debtor/petitioner is misconceived. Once the mandate of the decree is that the construction ABCD needs to be removed being encroachment, Executing Court rightly ordered removal thereof. Any effort made by the Executing Court to assess as to whether the construction was within the area owned by Judgment Debtor would have amounted to going behind the decree which was beyond the jurisdiction of Executing Court

9. In view of above, finding no merit in the present revision petition, the same is ordered to be dismissed.



10. Pending application(s), if any, shall also stand disposed off.

November 21, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No