

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****CR-2414-2024 (O&M)****Date of Decision : 16.10.2024**

Ramesh Kumar

....Petitioner

VERSUS

Hoshiyar Singh

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.R. Yadav, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been preferred by the plaintiff-petitioner challenging the order dated 29.01.2024 whereby the execution application filed by the plaintiff-petitioner herein has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction to the effect that the defendant-respondent herein be not permitted to forcibly take possession of the land comprised in Khewat No.51, Khatauni No.59, Mustil and Killa No.35//5/1/2 measuring 0 Kanal 14 Marlas situated in village Khayra, Tehsil and District Mahendergarh as per Jamabandi for the year 2006-07 allotted to him in partition proceedings on 02.07.2012 and also from raising construction of any type by taking forcible possession. During the pendency of the civil suit a Local Commissioner was appointed who gave his report on 28.12.2012 wherein he clearly stated that on the eastern side of the disputed land from Mark A to Mark B a wall measuring 69 ft. long and 1.5 ft. in height had been constructed and from Mark B to Mark C upto the level of

land after digging foundation 30 ft. construction has been made with the bricks and the work of construction was going on. The suit was decreed vide judgment and decree dated 09.09.2016 and the defendant-respondent was permanently restrained from interfering in the peaceful possession of the plaintiff-petitioner by raising construction after taking forcible possession of the suit land except in due course of law. An appeal was preferred by the defendant-respondent which appeal was dismissed vide judgment and decree dated 07.04.2017. Subsequently, an undated application was filed under Order XXI Rule 32 read with Section 151 of the Code of Civil Procedure, 1908. In the said application, a Local Commissioner was appointed who gave his report on 13.09.2023 (Annexure P-12). Vide the impugned order dated 29.01.2024 the said application was dismissed holding that the plaintiff-petitioner had failed to prove his case for issuance of warrants of possession with respect to the suit plot against the JD (respondent herein). Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the construction had been raised after the passing of the judgment and decree dated 09.09.2016 and hence the application ought not to have been dismissed. It is further the contention that the defendant-respondent was restrained from raising any construction and by raising a wall he has violated the judgment and decree dated 09.09.2016. It has further been contended that even if only a decree for permanent injunction has been passed the same would suffice for ordering demolition of the wall. Further reliance has been

placed on the judgment in **Kailash Chand Mittal vs Tirath Parkash Mittal and Others [2010(17) R.C.R (Civil) 940]**.

4. Heard.

5. In the present case a suit for permanent injunction was filed which was decreed vide judgment and decree dated 09.09.2016. Aggrieved by the same, an appeal filed by the defendant-respondent was also dismissed vide judgment and decree dated 07.04.2017. The application filed by the plaintiff-petitioner under Order XXI Rule 32 CPC was dismissed vide impugned order dated 29.01.2024. The argument of learned counsel for the plaintiff-petitioner that the judgment-debtor (respondent herein) had carried out the construction after the passing of the judgment and decree dated 09.09.2016 deserves to be rejected inasmuch as the Executing Court on the basis of the evidence has held that not an iota of evidence was produced by the plaintiff-petitioner that the construction over the suit property was made after the passing of the judgment and decree. The application itself is totally bereft of any details regarding the date, time, month and year when the alleged encroachment is stated to have been carried out by the defendant-respondent (judgment-debtor). Though in the application for execution it was averred that there was a tin-shed which has been placed by the defendant-respondent, however, the Local Commissioner in his report dated 13.09.2023 found that there was no tin-shed on the plot as alleged by the plaintiff-petitioner (decree-holder). The plaintiff-petitioner himself suffered a statement on 18.09.2023 that he was in possession of the vacant plot. The Executing Court held that the plaintiff-petitioner has failed to prove that the

wall was constructed after the passing of the judgment and decree dated 09.09.2016. Even before this Court learned counsel for the plaintiff-petitioner is unable to point out to any evidence having been led by the plaintiff-petitioner to show as to the date, time, month and year when the alleged encroachment is stated to have been carried out. The decree itself was simpliciter for permanent injunction. The argument of learned counsel for the plaintiff-petitioner that the construction was carried out during the pendency of the suit and even if a simpliciter decree for permanent injunction has been passed the demolition of the wall can be ordered, deserves to be rejected as learned counsel for the plaintiff-petitioner has been unable to point out to any reference in the impugned judgment and decree dated 09.09.2016 passed by the Trial Court regarding the existence of the wall. The judgement in the case of **Kailash Chand Mittal** (*supra*) would be of no help to the petitioner in the absence of any evidence to even remotely suggest that the wall was built after the passing of the decree.

6. In view of the above, I do not find any merits in the present revision petition and the same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

16.10.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO