

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

CR-2768-2023 (O&M)

Date of reserved:-23.07.2024

Date of Pronouncement: 25.07.2024

Ramesh

...Petitioner.

Versus

Gram Panchayat of Village Kakroi and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Shalender Mohan, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 21.03.2023, passed by learned Additional Civil Judge, (Senior Division), Sonipat, vide which the execution petition under Order 21 Rule 32 CPC for initiating the action against the respondents for violating the judgment and decree dated 18.09.2008, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition, as per the revision petition are that the petitioner filed a Civil Suit No.564 of 2002 for permanent injunction against respondent-Gram Panchayat of Village Kakroi, Tehsil and District Sonipat, restraining the defendant from getting demolished the house of plaintiff comprised in Killa No.96//13/1 situated within abadi of village Kakroi and from dispossessing him from the said house illegally and forcibly. This suit was decreed in his

favour by learned Additional Civil Judge, (Senior Division), Sonipat vide judgment and decree dated 18.09.2008.

3. Aggrieved against the said judgment and decree, defendant-Gram Panchayat filed an appeal before the Court of learned Additional District Judge, Sonipat, which was also dismissed vide judgment and decree dated 29.01.2009.

4. It is alleged that in the year 2017, the Sarpanch of village Kakroi, tried to dispossess the petitioner by illegal means, so the petitioner filed an Execution Petition on 17.04.2017 for execution of judgment and decree dated 18.09.2008. It is further alleged that during the pendency of the Execution Petition, respondent tried to dispossess the petitioner by unlawful, illegal activities and on 06.05.2017, the petitioner filed a stay application. On 10.05.2017, the interim injunction was granted in favour of the petitioner and the case was adjourned for 20.05.2017 for filing reply, but in the meantime, the respondent removed the possession of the petitioner illegally and unlawfully against the mandate of judgment and decree dated 18.09.2008.

5. Aggrieved against the action of the respondent for violating the judgment dated 18.09.2008 and order dated 10.05.2017, the petitioner filed a contempt petition. The respondent appeared in contempt petition as well as in the execution petition and filed the reply. The petitioner also filed an application for appointment of Local Commissioner and vide order dated 11.09.2017, the Executing Court appointed the Local Commissioner, who submitted his report on 07.10.2017, to which respondent No.2 filed the objections. The learned Executing Court vide order dated 21.03.2023,

dismissed the execution petition as well as initiation of contempt proceedings for violation of judgment dated 18.09.2008 as well as order dated 10.05.2017. Aggrieved against the said order, the petitioner has knocked the doors of this Court by way of filing the present revision petition.

6. Learned counsel for the petitioner has contended that the impugned order is totally without application of mind, as the judgment and decree dated 18.09.2008 has attained finality upto the Appellate Court and it became final between the parties, hence the same is liable to be implemented in toto. He has further contended that the Executing Court has to execute the order passed by the competent Court and it is not to delve into the technicalities and merits of the case. It stands proved that the petitioner is owner and in possession of the land in dispute. The Executing Court has ignored the report of the Local Commissioner dated 07.10.2017, who has been duly appointed by the Executing Court vide order dated 11.09.2017, wherein it has been specifically stated that there is boundary wall about 6-7 feet over the suit property and same is newly constructed and there was house fully demolished and destroyed material was lying there. In spite of that the Executing Court had adopted hyper technical approach and report of Local Commissioner has been ignored which proves that judgment and decree dated 18.09.2008 and order dated 10.05.2017 were completely violated. He has further submitted that the impugned order is totally illegal, arbitrary and not sustainable in the eyes of law and is liable to be set aside.

7. I have heard learned counsel for the petitioner and have gone

through the relevant record.

8. The perusal of judgment and decree dated 18.09.2008 reveals that in the said suit, the suit property was the house shown by letters ABCD in the site plan, comprised in Killa No.96//13/1. While decreeing the suit, learned trial Court had restrained the defendant/ judgment debtor No.1-Gram Panchayat from demolishing the house of the plaintiff and dispossessing the plaintiff from the suit land except in due course of law. The decree holder/ petitioner filed an execution petition in the form of application under Order 21 Rule 32 CPC and in which, he sought the relief not only qua Killa No.96//13/1 but also qua Killa No.96//8/1.

9. This contention of learned counsel for the revision petitioner is without any substance that the trial Court has also given the observation qua Killa No.96//8/1 and the petitioner is entitled to the relief qua that killa number. Rather, the perusal of the judgment and decree of the Appellate Court dated 29.01.2009 shows that the said observations were made in para No.11 of the judgment only to deal with the arguments raised by learned counsel for the appellant and no restraint order had been passed qua Killa No.96//8/1. As already observed the judgment and decree dated 18.09.2008 is pertaining only to Killa No.96//13/1. It is trite law that the Executing Court is not to go behind the decree. So when decree of learned trial Court as well as learned Appellate Court is only qua Killa No.96//13/1, then no relief was to be granted to the decree holder qua Killa No.96//8/1.

10. No evidence has been adduced by decree holder/ petitioner to prove that demolition, if any, made by respondent No.2 was in Killa No.96//13/1. Even in the report of the Local Commissioner dated

07.10.2017, it has not been mentioned that the alleged demolition was in Killa No.96//13/1. No such demarcation report has been brought on record, to ascertain the alleged demolition in Killa No.96//13/1.

11. Learned Executing Court has rightly observed that there was no violation even of order dated 10.05.2017 of the trial Court. Vide order dated 10.05.2017, learned Additional Civil Judge, (Senior Division), Sonipat had restrained the judgment debtor from removing the debris from the property in dispute and the restraint order was to be in operation only till the next date of hearing. As per report of Local Commissioner dated 07.10.2017, the debris were lying at the spot. From 10.05.2017, the case was adjourned to 23.05.2017 and on that day, the restraint order was not in continuation. So, it has been rightly observed by learned trial Court that there was no violation of order dated 10.05.2017 and execution petition as well as the application for initiating the contempt proceedings were rightly dismissed by the trial Court.

12. There is no illegality or infirmity in the impugned order and no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

13. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

25.07.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No