

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****ESA-35-2022 (O&M)****Reserved on: 09.09-2024****Pronounced on: 13.09.2024****SATYAWAN AND OTHERS****. . . .APPELLANTS****Vs.****KAMLESH (DECEASED) THROUGH LRS AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

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

Mr. Anurag Jain, Advocate, for respondent No.1.

Mr. R.K.S. Brar, Addl. AG, Haryana
For respondents No.7 to 9.Mr. Prateek Mahajan, Mr. Daanish Mahajan and
Mr. Mayank Vashishth, Advocate, for respondent No.10.**DEEPAK GUPTA, J.**

Some of the third party objectors have approached this Court by way of the present Execution Second Appeal against the orders passed by the Courts below, whereby the objections filed by them have been dismissed.

2.1 Suit for possession filed by the plaintiffs (*respondents No.1 to 6*) was decreed on 11.03.2016 vide *Annexure P-2*, in respect of land measuring 1 kanal 9 marla comprised in khasra No.188 situated within the Revenue Estate of Village Harikot. The decree for possession was passed against defendants- State of Haryana, District Education Officer and Head Master of Govt. Middle School, Village Harikot (*Respondent No.7 to 9 herein*), as a school exists in the disputed land.

2.2 Defendants of the suit preferred appeal, but the same was dismissed on 28.08.2017 *Annexure P-4*. However, opportunity was granted by

the appellate court to the defendants either to handover the vacant possession of the suit land, after demolishing the construction of school building at their own expenses or in the alternative, to acquire the suit land and to pay the compensation and statutory benefits as per the Land Acquisition Act within a period of three months of the judgment. Admittedly, the land was never acquired as per the option given by the Appellate Court.

2.3 In these circumstances, execution was filed by the decree holders, wherein warrants of possession was issued. As there was obstruction in delivery of possession, police help was also directed to be provided. It was at that stage that Gram Panchayat, village Hari Kot along with 12 villagers (*appellants herein*) filed the objections before the Executing Court. The said objections were dismissed vide order dated 25.07.2022 by the Executing Court. Appeal preferred by these third party objectors was dismissed by the appellate Court on 15.09.2022.

3.1 Against the aforesaid dismissal, the 12 residents of the village, who had joined the Gram Panchayat, have preferred this second appeal by impleading the Gram Panchayat as respondent No.10.

3.2 As per the objections of the Gram Panchayat and others, as School building exists on the disputed land, therefore, it is the Gram Panchayat, which is owner in possession of the same, as per the provisions of Punjab Village Common Lands Act. It is further the contention of the appellants that pursuant to the warrant of possession issued by the Court, the bailiff along with some of the decree holders has already demolished the school building constructed on the land in dispute. However, there also existed a chabutra of the school having dimension of 18' x 22', out of the which, the bailiff has already demolished the area/chabutra to the extent of 5'9" x 22' forcibly. The remaining portion of chabutra is 12'3" x 22', is still existing and that it is the Gram Panchayat, which is owner of the same, as per the jamabandi for the year 2016-17. It is contended that plaintiffs-decree holders have no right to get the same demolished.

3.3 Ld. counsel for the appellants contends that Courts below have erred in dismissing the objections, as decree holders are not entitled to take possession of the land or the school chabutra portion, which is not part of khasra No.188 and rather, which is the part of Khasra No.188/1 owned by the Gram Panchayat. It is urged that by dismissing the objections, the executing Court has travelled beyond the decree dated 11.03.2016.

3.4 With the help of site plan (*Annexure P9*), which was prepared by the Local Commissioner, who was appointed by the Executing Court at the request of both the parties, it is urged by learned counsel that Rajesh son of Om Parkash, and Baljit son of Ramswaroop have encroached upon Khasra No.188, regarding which decree has been passed, but instead of taking any action against them so as to have access to their land, decree-holders are bent upon to get the boundary wall of the school and portion of the chabutra demolished, in order to have access to the khasra No.188 regarding which the decree has been passed. It is further the contention of Id. counsel that no site plan was produced before the trial Court by the plaintiffs-decree holders. It is also contended by Id. counsel that execution cannot be allowed in respect of any land, which is beyond the scope of said khasra No.188.

3.5 With these submissions, prayer is made for setting aside the orders passed by the Courts below.

4.1 Refuting the aforesaid contentions, it is argued by Id. counsel for the decree-holders-respondents No.1 to 6 that decree holders are not at all interested in taking possession of the land beyond the scope of Khasra No.188, regarding which decree has been passed in their favour.

4.2 By drawing attention of this Court towards the *Aksh Shajra* placed on record, it is pointed out that khasra No.188 and Khasra No.188/1 are adjoining to each other. Khasra No.188/1 is on the Eastern side of khasra No.188. On the Northern side of both these khasra numbers, there exist a five Karam wide passage and that by constructing a chabutra on a portion of the passage in front of khasra No.188, the Gram Panchayat and the third

party objectors-appellants are creating obstacles in delivery of possession of the suit property to the decree holders-plaintiffs.

4.3 By referring to Order XXI Rule 35 of the CPC and by relying upon the ***B. Gangadhar Vs. B.G. Rajalingam, 1995 (3) RRR 188***, it is argued by Id. counsel that when a decree for possession of immoveable property is granted and delivery of possession is directed to be passed, the Executing Court is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. Id. counsel contends that this power also includes the power to remove any obstructions or super structure made pendente lite and that this exercise of incidental, ancillary or inherent power is consequential to deliver possession of the decree.

4.4 It is argued by Id. counsel that when the State Government i.e. JDs failed in the suit before the Courts below, they are using the shoulder of the Gram Panchayat and some of the village residents so as to create obstructions and it is very unfortunate that the Gram Panchayat alongwith State govt. is using the village residents to create obstacles in execution of the decree.

4.5 With these submissions prayer is made for dismissal of the appeal.

4.6 Id. State counsel appearing for JDs-respondents No.7 to 9; as well as the Id. counsel appearing for the Gram Panchayat-respondent No.10 supported the submissions as made by Id. counsel for the appellants.

5. This Court has considered submissions of both the sides and have appraised the paper-book carefully.

6. It is undisputed that plaintiffs-decree holders are owners of Khasra No.188 measuring 1 kanal 9 marla, regarding which decree for possession has been passed in their favour. It is also not in dispute that Gram Panchayat of village Harikot is owner of khasra No.188/1 measuring 1 kanal 1 marla and Khasra No.189 (9K - 0M), over which the school is existing. Since the school building was also raised on khasra No.188 owned by the plaintiffs-

decree holders, it cannot be claimed by the Gram Panchayat –respondent No.10 that it had become owner of the said property. No doubt that schools exists in the Gram Panchayat as per the Village Common land but it does not mean that Gram Panchayat or any other person can raise construction over private property of other and then claim title thereof. As such, both the Courts below have rightly held that Gram Panchayat cannot be entitled to suit property and that it is the plaintiffs-decree holders, who have been found to be owner of the suit property and so, they are entitled to the possession thereof.

7. Proceeding further, as per the *Aksh Shajra* placed on record, khasra No.188 and 188/1 are adjoining to each other. Khasra No.188/1 is on the Eastern side of khasra No.188. On the Northern side of both these Khasras, there exists a 5 Karam wide passage. Except from this passage, existing on the northern side of khasra No.188, the decree holders do not have access to their land, regarding which decree has been passed. There is land of other parties on other three sides, inasmuch as Khasra No.188/1 is on the Eastern side, Khasra No.189 exists on the southern side, whereas Khasra No.196 exist on the western side of khasra No.188. In case someone creates obstruction in the passage existing on northern side of Khasra No.188, obviously the decree holders will have no way to access their land. This is exactly what has been done by the third party objectors/Gram Panchayat.

8. It is evident that the JDs along with the third party objectors have raised chabutra of the school building in such a way that on a small portion thereof falls in Khasra No.188 and the remaining portion in the passage existing on the northern side of the khasra No.188. Although, the portion of the chabutra, which was existing on khasra No.188 has already been demolished by the bailiff but the appellants-third party objectors are now creating obstructions in removing the chabutra existing in the passage on the northern side of khasra No.188. It is only by removal of that chabutra and the boundary wall that the decree holders can have access to their land, regarding which decree for possession has been passed in their favour.

9. It is most important to notice that during the execution proceedings, Kanungo of the village Harikot, Tehsil and District Hisar was appointed as Local Commissioner by the executing court at the request of both the sides for demarcation of the property in dispute vide an order dated 13.10.2018. The said Local Commissioner appointed with consent of both the parties had submitted his report, copy of which has been placed on record along with the site plan prepared by him as Annexure P9. From the said site plan (Annexure P9), it is evident that a small portion of 6.80 sq. yard from Khasra N: 188 has been encroached by one Rajesh son of Om Parkash by annexing it with his property on the western side of khasra No.188. Another small portion of 12.45 + 2.61 sq. yard has been encroached upon by one Baljit son of Ram Swaroop by annexing it with his property on the western side of Khasra No.188. Decree-holders will be well within their rights to claim their rights against the said Rajesh and Baljit to get the encroachment removed from Khasra No.188 but for the time being, the 3rd party objectors or Gram Panchayat cannot take excuse or shelter on the pretext that encroachment by Rajesh and Baljit is not being removed. It is important to notice that even if the said encroachment as made by Rajesh and Baljit is removed as depicted in site plan (Annexure P9), still the decree holders will not be able to have access to their land, as on the western side of the encroached portion by Rajesh and Baljit, there exists their private land and not any passage.

10. As already noticed that the passage exists only on the northern side of khasra No.188 to have access to the said land. Most importantly, in the site plan (Annexure P9), the Local Commissioner has categorically mentioned that rest area of khasra No.188 and street in front of this site has also been encroached by the school as shown in the map. This site plan as prepared by the Local Commissioner, does not leave any doubt in the mind of this Court that it is only in order to create hindrance in execution of the decree that a portion of the chabutra has been constructed by the JDs/Gram Panchayat/third party objectors in order to create obstruction in execution of the decree by raising the same in the passage existing on the northern side of

the suit property. Ld. Executing Court has rightly held that Executing Court is well within its rights to get it removed so as to execute the decree.

11. Order XXI Rule 35 (3) of the CPC reads as under: -

“35. Decree for immoveable property –

(1) & (2) Xxxxx

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

12. Explaining the scope of the aforesaid Rule, it has been held by Hon’ble Supreme Court in **B. Gangadhar’s case (supra)** as under: -

“Rule 35(3) of Order XXI itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or super-structure made pendent lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.”

13. The contention of Id. counsel for the appellants to the effect that the Executing Court should have framed the issues, is without any merit. As already noticed that no doubt Gram Panchayat is owner of khasra No.188/1 existing on the eastern side of khasra No.188, but plaintiffs-decree holders are not staking any claim whatsoever over Khasra No.188/1. Even otherwise, the said Khasra No.188/1 exists on the eastern side of Khasra N: 188 and therefore, the school chabutra cannot be part of the said khasra No.188/1. It is evident from the site plan Annexure P-10 placed on record and also the site plan Annexure P-9 prepared by the Local Commissioner that the chabutra has been constructed in the passage existing on the northern side of the suit property just to create obstruction and as such, it was not at all necessary to frame the issues.

14. Reference can be made to ***Bikram Singh and Surjit Singh and others 2004(4) RCR (Civil) 422***, wherein it has been held by this Court that it is a duty of the Executing Court to execute the decree and merely because frivolous and vacations objections are filed with a view to delay and defeat the execution of the decree, it is not necessary that the Court must frame issues and grant opportunity to the parties to lead evidence.

15. It is the contention of Id. counsel for the appellants that as per Order XXI Rule 35 CPC, the person in possession of the suit property to be delivered must be per force bound by the decree and since the appellants and Gram Panchayat were not party to the suit in which the decree was passed, so Order XXI Rule 35 CPC does not apply. Id. counsel has referred to ***Bhanwar Lal Vs. Satyanarain, 1995 (2) RRR 398***. In the cited authority, it was held by Hon'ble Supreme Court as under: -

“A reading of Order 21 Rule 35(3) postulates that the person in possession of the immovable property to be delivered under the decree must be per force bound by the decree. Admittedly, Satyanarain was not a judgment debtor and that therefore, he is not bound by the decree unless he claims right, title or interest through the judgment debtor, Ram Kishan. The person resisting delivery of possession must be bound by the decree for possession. In other words, the resistor must claim derivate title from the judgment debtor. The

Court gets power under Order 21 Rule 97 to remove such obstruction or resistance and direct its officer to put the decree holder in possession of the immovable property after conducting enquiry under rule 97.”

16. No doubt that Gram Panchayat and the appellants—third party objectors are not party to the decree, but as found by the executing Court that they have no locus whatsoever to challenge the decree and to file objections, as it has been found that possession on the basis of decree passed is being claimed only in respect of khasra No.188 owned by the decree holders and not in respect of Khasra No.188/1 owned by the Gram Panchayat. The third party objectors/applicants cannot create objections under the garb of Order XXI Rule 35 CPC by raising chabutra or creating obstructions in the passage, which is meant to have access to khasra No.188. Moreover, before ordering removal of the chabutra and the obstruction as such, the executing court had conducted necessary enquiry as envisaged under Order 21 Rule 97 by appointing a revenue officer as local commissioner with consent of both the sides and after reporting of the obstruction by the said LC, directed to remove the same. Conducting enquiry under Order 21 Rule 97 does not mean that issues must be framed. As such, the contention raised by Id. counsel for the appellants is found to be devoid of any merit.

17. It has been held by Hon’ble Supreme Court in ***State of Haryana Vs. Mukesh Kumar, 2011 (3) Apex Court Judgement 701*** that no Government Department, Public Undertaking and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in any manner. If the protectors of law become the grabbers of the property, land or building of the private people, then said people will be left with no protection and there would be total anarchy in the entire country.

18. In the present case also, the JDs-State of Haryana by using the shoulder of the Gram Panchayat and some of the village residents, by creating obstructions in the execution of the decree and to deprive the

decree holders the fruits of the decree passes in their favour, want to keep their possession intact over the property of the decree-holders/plaintiffs, regarding which, decree of possession has been passed in their favour, which can not be permitted by the court.

19. Having regard to the entire discussions as above, this Court does not find any illegality or perversity in the impugned orders passed by the Courts below. The concurrent findings are hereby upheld. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

13.09.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes