

2024:PHHC:145854



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

116

CR-6539-2024 (O&M)
Date of decision: 08.11.2024

Sunita and others

...Petitioners

Versus

Murari Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Shiv Kumar, Advocate for the petitioners.

VIKAS SURI, J. (Oral)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to the order dated 04.10.2024 (Annexure P-10) passed by lower appellate Court, whereby the application seeking stay during pendency of the appeal against order dated 11.09.2024 dismissing the objections filed by the petitioners, has been declined.

2. Learned counsel for the petitioners submits that under the garb of implementation of the judgment and decree dated 29.11.2014 passed in a suit for permanent injunction, possession of the property of the petitioners was being threatened. The petitioners were not a party to the *lis* in which the aforesaid judgment and decree has been passed. The petitioners filed third party objections in the execution proceedings. It is pleaded that petitioners are owner in possession of land measuring 753 sq. yards situated in *abadi deh* in khasra No.20 of village Kheri Khurd,



Tehsil and District Faridabad that has been assigned property ID No.IBQHTPC3 and is adjacent to khasra No.26.

3. Learned counsel for the petitioners would point out that the property of the petitioners' falls in southern side of the suit property and the same is reflected in the description given in the decree itself (Annexure P-3). It is further submitted that aggrieved by the dismissal of the objections vide order dated 11.09.2023 (Annexure P-8), petitioners preferred an appeal which is pending. Along with the said appeal, petitioners moved an application seeking stay of execution proceedings till the decision of the appeal. The said application has been dismissed vide order dated 04.10.2024 without assigning any reasons.

4. Aggrieved by the said order, the petitioners have challenged the same through the present petition.

5. It is not disputed that the suit property in the decree sought to be executed is part and parcel of khasra No.06 situated in *abadi deh* of village Kheri Khurd, Tehsil and District Faridabad.

6. The categorical stand of the petitioners before this Court is that they are not in possession of any land comprising in khasra No.06 and their possession is confined to khasra No.20 as detailed in their objection petition. It is further submitted that the petitioners have constructed a *pucca* house on their land, which also comprises a shed for the cattle and fodder. Learned counsel for the petitioners states that the petitioners do not intend to encroach upon even an inch of the suit property falling in khasra No.06. However, subsequent to passing of the



impugned order, while ostensibly seeking to implement the judgment and decree dated 29.11.2014 passed in a suit for permanent injunction, warrant for possession has been ordered to be issued. In the absence of proper identification of the suit property, the aforesaid judgment and decree could not be implemented, more so, not against the property falling in khasra No.20.

7. Perusal of the case file reveals that to rule out any dispute regarding demarcation of the suit property, learned executing Court vide order dated 10.07.2024 has directed the concerned Patwari/Tehsildar to measure the suit property having dimensions 60 x 60 Sq. yards in Khasra No. 6 situated in *abadi deh* of village Khedi Khurd, Tehsil & District Faridabad and the bailiff was appointed as Local Commissioner. There is no material on record to show that demarcation has been carried out in compliance with the aforesaid order. On the other hand warrant for possession has been ordered to be issued.

8. The petitioners have taken a positive stand that they do not intend to obstruct implementation of the judgment and decree 29.11.2014 but only seek to defend their possession over khasra no. 20, which apparently is not part of the suit property. The executing Court has already ordered demarcation of the suit property, which ought to be complied with before executing the warrant for possession.

9. In the present case, the impugned order does not record any reasons for declining the prayer for stay of the proceedings before the executing Court. It is trite law that the first appellate Court is the final



Court of facts. In the light of the dispute arising on the factual aspect regarding proper identification of the suit property as ordered by the executing Court, demarcation would be expedient.

10. Thus, for want of any observations in the impugned order to reflect upon the decision arrived at, the present petition is being disposed of without notice to the other side.

11. Upon appraising the submissions made on behalf of the petitioners and having perused the record, I deem it appropriate to dispose of this petition by setting aside the impugned order dated 04.10.2024 (Annexure P-10) and directing the first appellate Court to expeditiously dispose of the application seeking stay, after hearing all concerned, by passing a reasoned order, in accordance with law. It shall be open to the Court below to simultaneously decide the appeal (Annexure P-9) preferred by the petitioners, stated to be pending for 17.12.2024.

12. The appellate Court would be at liberty to have the suit property demarcated as was ordered by the executing Court vide order dated 10.07.2024, which is stated to have not been done till date.

13. The revision petition is disposed of in the aforesaid terms.

November 08, 2024
sumit.k

(VIKAS SURI)
JUDGE

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