



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

ESA-62-2013 (O&M)
Date of decision: 28.03.2025

SARABJIT SINGH & ANR

..Appellants

Versus

MUNICIPAL COMMITTEE MUKERIAN & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Satpreet Grewal Kapila, Advocate (through v.c.)
for the appellants.

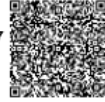
Ms. Jarnail Kaur Dhaliwal, Advocate
for respondent No.1.

Mr. Anil Bansal, DAG, Punjab
for respondent No.8

ANIL KSHETARPAL, J(Oral)

1. The appellants herein have carved out a colony by selling plots, and in between a passage was left for public usage. Subsequently, they dishonestly filed a suit against the Municipal Committee claiming ownership of the passage, which is comprised in Khasra no.187. The suit was decreed. When they filed the execution petition, the objections were filed not only by the Public Works Department, Punjab, but also by the purchasers. They claimed that this was the passage left by the appellants while carving out the colony. Both the Courts dismissed the execution petition. The Appellate Court recorded the following findings of fact:-

“30. Admittedly, Khasra No.187 is owned by Decree Holder and Shamlat Deh which measures 14 kanals 2 marlas and is Ghair Mumkin Rasta and this fact has been proved from copy of jamabandi for the year 2000-01 Ex. DH/1 and Ex. DH/2. Further from the perusal of the Aks Shajra Ex. DH/3 it is clear that Khasra No. 187 is abutting to Khasra No. 192 as has been mentioned in the jamabandi for the year 2005-06 Ex.DH/4 and Ex.DH/S



and site plans Ex.DHW3/A and Ex. DHW3/B. There are photographs Mark DX2 1o DX-22 on the file which shows the road, shops and residential houses abutting to the road falling in Khasra No. 192. The other objectors have also proved sale deeds executed on different dates either by Decree Holder or by the vendors of the decree holder. Perusal of sale deeds on the file shows that when boundaries of the plots sold were marked in the sale deeds specifically on one side, the decree holder has shown passage which admittedly falls in Khasra No. 192. The decree holders are not claiming that in fact they sold Khasra No. 187 in parts to the persons who have purchased the property from them have not constructed their shops or residential house son the property sold to them but they have constructed the same on different places. Decree Holders have failed to place on record any evidence to show that passage in dispute which falls in Kh.No. 187 hit been got constructed by the Municipal Council Mukerian or the Municipal Council is repairing the same from time to time PWD Department has proved on the file documents Ex. 01 to Ex.07 which shows that road in dispute was constructed by PWD department since long and people are using the same. The decree holders claimed that executing court can not go beyond the decree and to execute the same as it is. No doubt, this plea of decree holder is correct to the extent that executing court can not go behind the decree however there are exceptions to this fundamental right. If a decree can not be executed against the person against whom it has been passed, then doctrine of lifting veil is applicable and the said principle can always be applied by the court behind the decree and intention of the court while passing such decree. In the present case, this decree has been passed against M.C. Mukerian for possession of land measuring 1 kanal 18 marlas being part of Khasra No.187 and then in the present execution when the MC Mukerian filed objections and same were head by learned lower court and vide order dated 15.3.99 passed by the court, it was held that PWD Department not being a party to the judgment and decree under execution would not in any manner be effected by anything said and done in that judgment or in the execution. Municipal committee is proved to be in possession as owner of property in dispute and decree can be executed against M.C. Mukerian and not against PWD Department. The objections have proved on record that passage in Khasra No. 192 belongs to PWD Department and MC Mukerian has no concern with the same and there to construction of shops and residential houses on both the Sides of said passage. The decree holders have failed to proved on record that objectors have not raised constructionist of



their shops and residential houses at some other places and not on the places purchased by them. On the one hand decree holder is claiming that private objectors have constructed their properties at different places then purchased and therefore they have encroached upon different land of decree holders and on the other hand, the decree holders claimed in the suit that MC Mukerian has encroached upon khasra No. 187. The Decree holders must specifically plead and prove that which area is in the illegal possession of which person and thereafter the decree holder can get possession in this execution. The case laws cited by learned counsel for the respondents are applicable to the facts of the case in hand. As such, no ground is made out to interfere in the findings of learned lower court on issues No. 1, 2, 3, 3A, 3B, 3C and 4 therefore findings of learned lower court on these issues are affirmed.”

2. Learned counsel for the parties have been heard at length.
3. Learned counsel for the appellants submits that there is a decree, which is required to be implemented. Admittedly, in the aforesaid decree, neither the purchasers to whom the plots were sold were made a party nor the government was made a party.
4. A perusal of Ex.DHW3/A, a layout plan proves that a passage/road was left in order to give access to the shops, which were carved out by the appellants.
5. Consequently, the appeal filed by the appellants is dismissed with cost of Rs.1,00,000/-, which shall be liable to be recovered as land revenue.
6. All the pending miscellaneous applications, if any, are also disposed of.

March 28th, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*