

(2001) 08 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 2192 of 1994

Balwant Singh and others	Vs	APPELLANT
M/s Krishana and Company Rohtak and others		RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32(5)

Citation : (2002) 1 RCR(Civil) 470

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Ashish Kapoor, for the Appellant; H.S. Hooda, with Mr. Dinesh Arora, for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—The present revision petition has been filed against the order of the executing Court vide which it was directed that the decree holder will raise four walls over the khasra number in dispute and the Plaintiff of the Court shall be present at that time, who shall report as to whether any resistance has been made by the Petitioner or not. Vide the said order, it has further been directed that Sadar Kanungo, Rohtak, shall demarcate the khasra number as per report of Tehsildar at the spot.

2. Heard counsel for the parties and record perused.

3. Learned Counsel for the Petitioners contends that in the suit, out of which execution applications has arisen, the Petitioners were only restrained from interfering in the property in dispute bearing Khasra No. 6821. Since the Petitioners never interfered in the said Khasra number, which is apparent from the report of the Local Commissioner also, the trial Court was not justified in passing the order under challenge.

4. Learned Counsel for Respondents No. 1 and 2 vehemently contended that under the provisions of Order 21 Rule 32(5) C.P.C., the executing Court is

competent to pass such an order and that in the present case, the order has been passed with a view to put an end to the litigation permanently.

5. this Court is of the opinion that the arguments raised by the Learned Counsel for the Petitioner are correct. The executing Court is supposed to pass an order, only if, some wilful violation of the decree passed is alleged and proved on the part of the judgment debtor and not otherwise. In the original suit No. 425 of 1985, decided on February 11, 1988, the following relief was given to the Respondents:

As a result of my findings on issues No. 1 and 2 and the evidence discussed above, the suit of Plaintiffs succeeds and the same is hereby decreed with costs restraining the Defendants from interfering in their possession of the property in suit comprised in Khasra No. 6821 measuring 1 Bigha 9 Biswa pukhta, situate in Majja Rohtak, Teh, & Distt. Rohatk. Let a decree sheet be prepared accordingly.

6. The executing Court before passing the impugned order appointed a Local Commissioner as per directions of this Court to demarcate the land at the spot and also to report whether there exists any encroachment over the said plot made by the Petitioners in the present case. The Local Commissioner gave his report after demarcation and clearly opined that in khasra No. 6821 at the spot no construction exists. (On the asking of the Court, copy of the Local Commissioner's report was placed on the record by the counsel for the Petitioners).

7. Once it is proved that the Petitioners had not made any violation of the decree passed, no option was left with the executing Court except to dismiss the application of the Respondents but in the present case the Court has gone beyond its jurisdiction by allowing the Respondents to raise a boundary wall around the property in dispute, that too under the supervision of Court, Bailiff and a Local Commissioner. No such relief was given to the Respondents when the original suit was decreed. In *Rohtas and Ors. v. Bakhtawar* 1990 P.L.J. 297, this Court has held as under:

After hearing the Learned Counsel for the parties, I am of the considered opinion that before proceeding with the execution application under Order XXI Rule 32 of the above said Code, the Court must come to the conclusion that the judgment-debtor had an opportunity to obey the decree and he has willfully failed to obey it. It is only after that the decree may be enforced, as provided therein. Since no such finding has been given by the executing Court as such, the execution could not proceed.

8. In the present case also the Court has not given any finding to the effect that the judgment debtor has willfully failed to obey the decree passed against him. As such the order under challenge was not correct. Counsel for the Respondent has placed reliance on the provisions of Order 21 Rule 32 (5) CPC to contend that the Court has the powers to issue directions to enforce the orders/injunction passed by it and to support his contention he has placed reliance on the

judgments titled as Bawa Singh v. Sajdhu Singh, (1969)71 P.L.R. 516 and Mst. Hajra Vs. Abdul Majeed Matoo and Others, . with due respects both the judgments are not applicable to the facts of the present case and also the contention that the executing Court can exercise the powers under sub Rule 5 of Rule 32 of Order XXI CPC in the present case is not correct. These powers can be exercised where some decree granting mandatory and prohibitory injunction has been passed as is apparent from the reading of the above said two judgments but in this case no such injunction was passed by Court. So the Court was not justified to exercise the powers under Order 21 Rule 32 (5) C.P.C.

9. In view of the facts stated above, the revision petition is allowed and the impugned order is set aside. The trial Court is directed to pass a fresh and appropriate order in accordance with law, if already not passed, for disposal of the execution application.