
(1989) 08 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1655 of 1987

Bhagat Ram

APPELLANT

Vs

Swaran Chand

RESPONDENT

Date of Decision : 02-08-1989

Acts Referred:

Citation : (1990) PLJ 470 : (1991) 1 RRR 197

Hon'ble Judges : M.S.Liberhan, J

Advocate : R.A. Sheoran, Advocates., Sarwan Singh, Advocates for appearing Parties

Judgement

M.S. Liberhan, J. (Oral)

Bhagat Ram, decreeholder sought execution of a decree dated 15.2.1984, passed in the following terms :

"It is ordered that the suit of the plaintiff succeeds and is decreed against the defendant for the issuance of mandatory injunction, directing the defendant to vacate the space at point "DX", shown in the site plan Exhibit LC/1, in order to open and clear the drain and to close the ventilators, doors and windows, towards plaintiff's house, as undertaken by the defendant in his statement on 27.5.1982, to close those on the suit being decreed against him."

1.The judgmentdebtor objected the execution of the decree inter alia on the grounds that the drain and the street in which the door, ventilators and the windows open, is a public street and its ownership vests in the Gram Panchayat and cosequently, the matter was within the jurisdiction of the District Development and Panchayat Officer, (D.D.P.O.) under the Punjab Village Common Lands (Regulation) Act, 1961 and the civil Court has no jurisdiction to pass the decree sought to be executed. The executing Court found that the land vests in the Gram Panchayat it being a public street and the drain being also a public place, it is only the D.D.P.O. who had village under the aforesaid Act, hence the decree passed by the civil Court is a void decree and the same cannot be

executed in these proceedings.

2. The learned counsel for the petitioner contends that the reasons given by the trial Court cannot be sustained inasmuch as there is no dispute between the parties with respect to the title of the land under the drain nor there is any claim that ventilators, doors and windows of the defendant are owned by the Gram Panchayat. The dispute was between the two private parties and the trial Court, after taking into consideration the pleas raised, and the evidence recorded in the suit passed the decree. The judgmentdebtor cannot be permitted to go behind the decree, the decree is not void on the face of it. Even otherwise also the decree is not void. It is contended that the executing court cannot go behind the decree and in order to support this contention reliance is placed on Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, 1970(*) RCR (Rent) 427 : AIR S.C. 1475.

3. The learned counsel for the respondent controverts the submission made by the learned counsel for the petitioner and contends that the decree is based on some earlier compromise entered into between the parties in 1967, consequently a subsequent decree is bad.

4. In my considered view, the contention raised by the learned counsel for the respondent has no force. On being pointedly asked as to how the decree is void, learned counsel is unable to show any reason on account of which the decree can be termed as void. Admittedly, there is no dispute with respect to the rights of the Gram Panchayat. The civil Court has jurisdiction on all matters except wherein the jurisdiction has been either implicitly or impliedly barred. Nothing has been pointed out to show how the matter which resulted in the decree sought to be executed, was outside the purview of the civil Court. Admittedly no plea was taken earlier that the civil Court has no jurisdiction in the matter.

5. Apart from this, on the face of the decree there is nothing from which it could be inferred that the decree is without jurisdiction. The parties for the reasons best known to them and on the basis of the evidence, suffered a decree with respect to closing down of ventilators, doors and windows in the defendant's house towards the plaintiff's house. The Gram Panchayat has got no interest or right in the ventilators, doors and windows etc. of the judgmentdebtor. It was further ordered that the defendant shall vacate the space at point "DX" shown in the site plan Exhibit LC/1. Again I do not find any reason for or any right of the defendant to continue to occupy the space at point "DX" in spite of the decree having been passed against him.

6. There cannot be any dispute with the proposition that the executing Court cannot go behind the decree unless it is shown to be void on the face of it. There is nothing on the record to show that the decree is void on the face of it. The reasons given by the executing Court are bereft of the fact that the trial Court has taken note of the fact that jurisdiction of the civil Court has been ousted only with respect to the dispute and the rights of the Gram Panchayat. There is also

no dispute with respect to the right of the Gram Panchayat which has been settled in the impugned order.

7. No other point has been pressed.

8. For the reasons recorded above, I accept the revision petition, set aside the impugned order of the executing Court. The case is remanded to the executing Court to execute the said decree in its terms. The parties are directed to appear before the executing Court on 5.9.1989.