

(2010) 10 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Revision Petition No. 77 of 2010

Geegraj

APPELLANT

Vs

Prahlad Ram

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : (2010) 10 RAJ CK 0015

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Aggrieved by the order dated 02.08.2010, passed by the learned Civil Judge (Junior Division), Khetri, District Jhunjhunu, whereby the learned Judge has rejected the petitioner's application u/s 47 read with Section 151 CPC in an execution proceeding, the petitioner has approached this Court.

2. The brief facts of the case are that the non-petitioner, Prahlad Ram, had filed a suit for mandatory injunction against the petitioner wherein he had claimed that the petitioner had created obstacles in the use of the way, which extends to a width of 18 ft., by encroaching upon it. Along with the suit, he had filed a map. The petitioner, in his written statement, had categorically denied the claims made by the plaintiff-non-petitioner. In order to discover the reality at the site, the learned Judge had appointed a Commissioner, Mr. Vishvanath Agrawal. The Commissioner had submitted his report, which is marked as Exhibits-4 & 5. Subsequently, the plaintiff-non-petitioner examined himself and the Commissioner as witnesses. After hearing both the parties, vide judgment and decree dated 15.01.2004, the learned Judge decreed the suit in favour of the plaintiff-non-petitioner. Since the petitioner did not remove the encroachment, the plaintiff-non-petitioner filed an execution application before the learned Civil Judge. During the pendency of the execution petition, the petitioner filed an application u/s 47 read with Section 151 CPC. However, the same was dismissed by the impugned order. Hence, this petition before this Court.

3. Mr. S.K. Gutpa, the learned Counsel for the petitioner, has vehemently contended that a vague decree has been passed as the nature of encroachment, the extent of encroachment has not been revealed in the decree. Therefore, the said decree cannot be executed. Secondly, the width of 18 ft. cannot be measured, as beyond a certain point there is only sand which tends to shift. Therefore, the reference point, from where the 18 ft. needs to be measured, is unknown. Thirdly, the learned trial court did not have the jurisdiction to pass the decree.

4. Heard the learned Counsel for the petitioner and perused the impugned order.

5. A bare perusal of the impugned order clearly reveals that according to the learned Civil Judge, the Commissioner's report clearly indicated that a wall had been built and the wall was in existence. Moreover, the said area of encroachment had clearly been indicated in red ink in the Commissioner's report. Taking the wall as the reference point, obviously the width of 18 ft. could be calculated from the wall. Furthermore, the petitioner has never challenge the veracity of the Commissioner's report. Therefore, the learned Judge is justified in relying upon the Commissioner's report. Hence, the first contention raised by the learned Counsel is without any merit.

6. The second contention is also unacceptable. For, the plaint itself, and the map along with the plaint, and the Commissioner's report reveal the specific area of encroachment. Thus, the decree cannot be faulted as being vague.

7. The issue with regard to the jurisdiction of the trial court passing the decree cannot be raised before the Execution court. For, it is a settled principle of law that an Execution court cannot go beyond the decree. Furthermore, as the petitioner has not challenged the decree by filing an appeal, he cannot be permitted to raise the issue of jurisdiction before the Execution court. Hence, the third contention raised by the learned Counsel is also unacceptable.

8. With these observations, the revision petition being devoid of merit is, hereby, dismissed.