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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-5531-2022(O&M)

Date of decision:-29.11.2022

Rattan Singh @ Rattan Lal

...Petitioner

Versus

Smt.Bhirawan Bai and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Abhishek Yadav, Advocate  
for the petitioner.

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**H.S. MADAAN, J.(ORAL)**

1. Briefly stated, facts of the case are that plaintiff Smt.Bhirawan Bai and others had filed a civil suit against defendants Rattan Singh and three others seeking possession of land situated at village Hansi, Tehsil Hansi, District Hisar said to be in illegal possession of defendants and such encroachment by defendants over the land belonging to the plaintiffs came out as a result of demarcation carried out by revenue authorities on an application having been filed by the plaintiffs. The defendants have got their agricultural land adjoining to land of plaintiffs. The plaintiffs requested the defendants to vacate the possession but to no effect. As such, the plaintiffs brought the suit in question.

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2. On notice, the defendants appeared and filed written statement contesting the suit taking various legal objections, on merits denying that they have encroached upon any portion of land belonging to the plaintiffs, rather stating that the demarcation report dated 6.1.2011 submitted by Iqbal Krishan, Kanungo is against law and facts since the demarcation was carried out in violation of instructions of Financial Commissioner, Haryana and no notice was given to the defendants before carrying out demarcation. In the end, the defendants prayed for dismissal of the suit.

3. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

4. After hearing arguments, Civil Judge (Jr.Divn.), Hansi vide judgment and decree dated 3.7.2014 allowed the claim of the plaintiffs, resultantly the suit filed by the plaintiffs against the defendants was decreed and plaintiffs were found entitled to get possession of the suit land from the defendants.

5. Feeling aggrieved, the defendants had preferred an appeal before the Court of District Judge, Hisar, which was assigned to learned Additional District Judge, Hisar, who vide judgment and decree dated 8.5.2018 dismissed the appeal affirming the judgment and decree passed by the trial Court.

6. Thereafter, the plaintiffs/decree-holders had filed an execution petition in the Executing Court of Civil Judge (Jr.Divn.), Hansi seeking execution of decree passed in their favour. Notice of the execution petition was given to respondents/JDs. JDs No.2(k, kh, g & gh) had not

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put in appearance despite service and they were proceeded against ex-parte. Similarly JD No.1 had not appeared despite due service and was proceeded against ex-parte. The execution petition had been filed in the Court on 15.12.2020 and on getting notice JD No.4 had put in appearance on 12.4.2021 and had been getting adjournments. No reply to the execution petition nor objections were filed by such JD till passing of the impugned order on 8.8.2022. Therefore, observing that Appellate Court has not stayed the execution of the decree and decree-holders cannot be deprived of fruits of their success, placing reliance upon two judgments concluded that no further opportunity for filing of reply/objections was justified and directed that warrants of possession be issued for 29.8.2022. On that date the warrants of possession were received back unexecuted and fresh were ordered to be issued for 19.9.2022. On 19.9.2022 warrants of possession could not be executed and fresh were ordered to be issued for 6.10.2022 and SHO concerned was directed to provide necessary police help under the supervision of Tehsildar being Duty Magistrate so that the warrants could be executed. On that date, an application for setting aside of ex-parte order dated 8.8.2022 was filed, which was adjourned to 6.10.2022. On 6.10.2022 again warrants of possession were received back unexecuted. An application was filed on behalf of the JDs for not handing over the possession of suit land to the decree-holders. For filing reply to the application, case was adjourned to 10.10.2022. On 10.10.2022, case was adjourned to 20.10.2022 for consideration on both the applications. On 20.10.2022, the case was adjourned to 26.10.2022; on 26.10.2022, case was adjourned to 2.11.2022, then to 10.11.2022 and then

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23.11.2022.

7. The JD Rattan Singh @ Rattan Lal by way of filing the present revision petition is seeking setting aside of order dated 8.8.2022 vide which the petitioner had been proceeded against ex-parte.

8. I have heard learned counsel for the petitioner besides going through the record.

9. I find that the revision petition is totally devoid of any merit. The plaintiffs had approached the Civil Court way back on 4.8.2012 complaining that their neighbouring owners, the defendants had encroached upon a part of land belonging to them. They had successfully proved their case in the Court and a decree was passed in their favour on 3.7.2014. Although an appeal was preferred against that judgment and decree but it was dismissed on 8.5.2018. An execution petition was filed about two years earlier but till date, the possession of the encroached portion could not be got delivered to the decree-holders, which speaks volumes for working of our judicial system, which is painfully slow and sluggish creating frustration amongst the people seeking justice. JDs having lost the litigation in the trial Court as well as in First Appellate Court with no stay order being there in their favour have successfully stretched the proceedings getting one adjournment after the other on one pretext or the other and the Executing Court seems to be granting liberal adjournment without being sensitive to the plight of the decree-holders, who are waiting justice for long more than 10 years. The Executing Court needs to take strong and stringent action in the matter so as to ensure that warrants of possession are executed rather than passing orders in a

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mechanical manner that warrants of possession had been received back unexecuted, fresh be issued for the next date of hearing. That rather shows insensitive approach of the Executing Court.

10. Thus, finding no merit in the civil revision petition, the same stands dismissed.

11. It is hoped and expected that the Executing Court would realize its responsibility and get the decree executed at the earliest.

29.11.2022

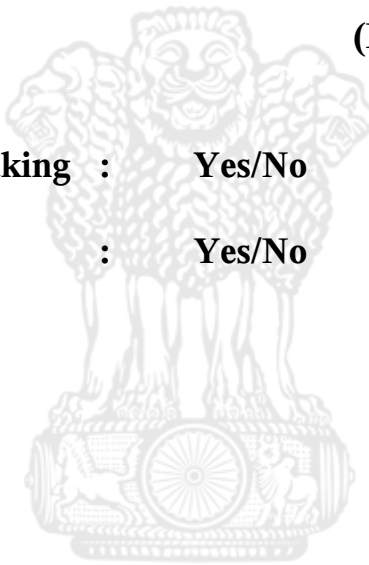
Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No



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