

(2006) 08 P&H CK 0553

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3320 of 2005

Inderjit Singh

APPELLANT

Vs

Rajinder Kaur and Others

RESPONDENT

Date of Decision: Aug. 21, 2006

Acts Referred:

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

Citation: (2007) 2 CivCC 732 : (2006) 4 RCR(Civil) 644

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Kanwaljit Singh, for the Appellant; Ashok Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

This is a revision petition against an order passed by the learned Additional Civil Judge (Senior Division), Ambala dismissing the objections filed by the petitioner herein.

2. The respondent-Decree Holder had filed an execution application under Order 21 Rule 32 of the CPC (for short the Code) claiming that vide judgment and decree dated 06.10.1998 the Decree Holder was held to be in exclusive possession of the portion measuring 19'-6" x 5" i.e. Koocha Khaas over which the defendant has no right to encroach. The claim of the Decree Holder was that the objector has started interfering in the exclusive possession of the Decree Holder over the portion in dispute to which he had no right.

3. To the application moved by the respondent-Decree Holder, objections were filed by the petitioner on the ground that he has not obstructed or raised construction nor he is blocking or obstructing the Koocha Khaas situated on the northern side of the house of the Decree Holder which is 18'-6" in length and 5" in width as per the site plan. The objector further denied that he had disobeyed the terms of the

decree. It was further the case of the petitioner that he did not intend to raise any construction or block Koocha Khaas. The claim of the petitioner was that the property in question is meant for ingress and outgress of the house of the parties and as no overt act has been done by the Judgment Debtor-respondent No.2, the execution application moved by the Decree Holder was without any merit and was liable to be dismissed. Learned Executing Court returned the following findings:

4. In view of the above mentioned categorical observations of the learned Appellate Court, it can be stated that the defendant/JD has no right to interfere in the passage of Koocha Khaas i.e. suit property. Though in para No.5 of the objections filed by the respondent No.2/JD, it is mentioned that the suit property. Koocha Khaas is meant exclusively for ingress and outgress of the houses of the applicant/Decree Holder and respondent/JD but it is not so. Accordingly, the JD/respondent has no right to raise construction or create any obstruction in the usage of the passage by the applicant/ DH.

In view of the findings recorded above, the objections filed by the petitioner were dismissed and the case was adjourned for filing reply to the application moved by the Decree Holder seeking physical possession of the suit land.

4. Mr.Kanwaljit Singh, learned counsel for the petitioner has challenged the finding of the lower Court by referring to the decree passed by the Court which reads as under:

A decree for permanent injunction restraining the defendants from raising any construction or blocking and obstructing the Koocha Khaas existing along the northern side of the house of the plaintiff which is 19'-6" in length and five feet in width as per site plan Ex.P3 is passed in favour of the plaintiff and against the defendant-respondent.

The contention of the learned counsel for the petitioner is that the decree was only qua raising of any construction or blocking and obstructing the Koocha Khaas existing on the northern side of the house of the plaintiff which is 19'-6" x 5" as per site plan Ex.P3 and therefore, it was wrong on the part of the Executing Court to reject the objections filed by the petitioner and holding that the Decree Holder was entitled to the exclusive possession of Koocha Khaas.

5. Learned counsel for the petitioner placed reliance on a judgment of Hon"ble Supreme Court in *Mulkh Raj v. Sunder Das and others*, 1996(2) CCC 500 (S.C.); 1996(3) RCR (Civil) 122 to contend that the parties are bound by the decree and any other proceedings in respect of the order passed in the suit relating to the property involved in the suit would stand-closed. The contention of the learned counsel for the petitioner was that once the petitioner has accepted the injunction as ordered it was not open to the Executing Court to proceed further with the matter or to give possession of the property to the respondent herein.

6. Learned counsel for the petitioner also placed reliance on the judgment of this Court in State of Punjab v. Sudarshan Sanwal, 2003(4) SCT 252 to contend that the Executing Court has no jurisdiction to grant relief beyond, the decree. The contention of the learned counsel for the petitioner was that it was the duty of the Court to first ascertain as to whether the claim made in execution was in consonance with the decree sought to be executed.

7. Mr.Ashok Gupta, learned counsel for the respondent, on the other hand, contended that the relief sought was in consonance with the decree passed by the Court. The claim of the respondent is that he was entitled to exclusive use as it was Koocha Khaas which means that the same was for exclusive use of the petitioner. He relied upon the findings recorded by the learned Additional District Judge, Ambala wherein in para No.9 of the judgment the Court was pleased to hold as under:

That there is a Koocha Khaas or passage meant exclusively for the plaintiff-appellant in the northern side of his property.

In addition he also referred to observation of the lower appellate Court wherein it was held as under:

That there is a Koocha Khaas or passage meant exclusively for the plaintiff-appellant in the northern side of his property.

In addition he also referred to observation of the lower appellate Court wherein it was held as under:

That passage is Koocha Khaas which is meant only for the plaintiff and the defendants have no right to encroach over that passage.

The contention of the learned counsel for the petitioner in view of above is that even though word exclusive is not mentioned in the decree still the order of the Executing Court cannot be faulted with as the same is in consonance with the judgment.

8. I have considered the arguments raised by the learned counsel for the parties. Though prima facie the argument raised by learned counsel for the petitioner looks attractive to the effect that the Executing Court cannot go behind the decree and cannot grant anything more than what has been granted by way of decree but when seen in depth the same carries no force. The Hon"ble Supreme Court in [Topanmal Chhotamal Vs. Kundomal Gangaram and Others](#), has been pleased to hold as under:

At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment.

9. Thus, in view of the law laid down by the Hon"ble Supreme Court it is clear that in case there is any ambiguity like in the present case it is open to the Executing Court to interpret the same by referring to the judgment passed by the Courts below. As

already observed above in para Nos.9 and 10 of the judgment of the learned Additional District Judge it was clearly mentioned that Koocha Khaas was for exclusive use of the respondent herein and the plaintiff, therefore, could not interfere with the use by the Decree Holder. Merely because, word exclusive was not mentioned in the decree passed would not entitle the petitioner, herein to use the same though it is meant for exclusive use of the respondent.

10. Thus, there is no merit in the present revision petition, same is accordingly dismissed.