Mukesh Vs Randbir Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 21, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 32

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Navneet Singh, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.
This revision petition is directed at the instance of the judgment-debtors against the order dated 12.03.2014 by

which the Executing Court has passed the order of attaching the property of the petitioners by issuing warrants of possession. The Trial Court had

passed the decree on 09.09.2000, which reads as under:-

It is ordered that the suit is hereby decreed and a decree for permanent injunction is hereby passed in favour of the plaintiff and against the

defendants for restraining the defendants from interfering in plot no. 105 and an area of 76 sq. yards towards northern side of plot no. 398 and

400 as mentioned in the Local Commissioner report dated 26.03.1999. Suit decreed with costs.

2. The plaintiff filed application under Order 21 Rule 32 CPC on the ground that the aforesaid decree has been disobeyed as the petitioners have

raised construction on the area measuring 76 sq. yards towards northern side of plot no. 398 for which they were restrained.

3. In the said application, after pleadings were over, two issues were framed by the learned Executing Court and after granting opportunity to both

the parties to lead their respective evidence, a firm finding has been recorded that the defendants/judgment-debtors have encroached upon the area

of 76 sq. yards comprising in plot no. 398 belonging to the decree-holders.

4. Counsel for the petitioners has vehemently argued that there is an error of appreciation by the Executing Court because, according to him, the

area of 76 sq. yards towards northern side was pertaining to both the plots, whereas plot no. 400 has ample space in which area of 76 sq. yards

has not been encroached upon.

5. After hearing learned counsel for the petitioners and examining the record, I am of the considered opinion that the argument raised before me is

totally mis-conceived because the decree of the Trial Court specifically says that the defendants/judgment debtors would not interfere in plot no.

105 and an area of 76 sq. yards towards northern side of plots no. 398 and 400. Had the decree been framed in the manner which would have

suggested that the Court is talking about the area of 76 sq. yards which has to fall in either of the plots, then the arguments raised by counsel for the

petitioners would have some substance, but since the Court had mentioned in the decree about the area of 76 sq. yards towards northern side of

plots no. 398 and 400, it is apparent that it talks about the area of 76 sq. yards in both the plots separately.

6. No other argument has been raised.

7. Dismissed.