

Jugga Vs. Mal Singh

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Court : Punjab and Haryana

Decided On : Nov-05-1993

Reported in : (1994)106PLR631

Judge : G.C. Garg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 21, Rule 32

Appeal No. : Civil Revision No. 630 of 1991

Appellant : Jugga

Respondent : Mal Singh

Advocate for Def. : Rakesh Nagpal, Adv.

Advocate for Pet/Ap. : Rameshwar Malik, Adv.

Disposition : Revision allowed

Judgement :

G.C. Garg, J.

1. Suit for permanent injunction filed by Mai Singh, respondent was decreed in his favour on February 21, 1986. He filed an application under Order 21 Rule 32 of the Code of Civil Procedure alleging that the judgment-debtor, petitioner after passing of the decree illegally and forcibly constructed a wall on the eastern side of the plot

owned by him. The application was contested by Jugga, judgment-debtor. It was submitted that the alleged wall was an old construction and that no construction was raised by him after the passing of the decree dated February 21, 1986 and that the construction, if any, existed even before the filing of the suit.

2. After affording an opportunity to the parties to lead evidence, learned executing Court directed the judgment-debtor to restore the possession of a part of the plot in which he had constructed the wall, within a month failing which proceedings for attachment of the property of the judgment-debtor would be taken. Feeling aggrieved by the order passed by the executing court, the judgment-debtor has filed the present revision.

3. Learned executing Court rightly noticed that the question involved in the petition was, whether the judgment-debtor encroached upon a part of the plot of the applicant after passing of the decree dated February 21, 1986 and for holding that the judgment-debtor had made encroachment and constructed a wall on the southern eastern corner of the plot in dispute, it took into consideration the demarcation report dated May 15, 1986, Exhibit A, I and concluded that the perusal of the demarcation report showed that the judgment-debtor had illegal possession over the side in dispute of the decree-holder. As against this, report of the local commissioner dated May 10, 1990 was rejected by the executing Court by observing that the same was made on the basis of observations and on seeing the bricks whether the same were new or old. It was ultimately concluded that from the demarcation report it was apparent that the judgment debtor had made illegal encroachment and that the report of the local commissioner regarding construction of wall, it being 10/15 years old, cannot be looked into as it has already been decided by the Court that there was no construction of wall over the plot in dispute of the decree-holder.

4. In the above background, learned counsel for the petitioner contended that the wall complained of existed even before the filing of the suit and in the absence of a positive finding to the effect that the wall had been constructed after passing of the decree dated February 21, 1986, direction as given by the executing Court could not be issued. I find force in the submission of learned counsel for the petitioner.

During the pendency of the suit, a plea was raised on behalf of the decree-holder (plaintiff) that after grant of the temporary injunction, the defendant, now judgment-debtor raised a wall on a part of the plot in dispute and thus violated the injunction. The local commissioner appointed by the Court in his report submitted that four walls around the plot of the defendant were more than 10/15 years old and were upto the height of 7 feet. Another report made by the Naib Tehsildar, Exhibit B.I showed that the plot of the plaintiff was not found to have been encroached upon by the defendant in any way. In the circumstances, the decree-holder was bound to prove that the judgment-debtor had raised some construction after the passing of the decree dated February 21, 1986 over a part of the plot owned by him (decree-holder). Unless it was so shown, the application moved by the decree-holder under order 21 Rule 32 of the Code of Civil Procedure could not be allowed. The mere fact that some area of plot of the decree-holder was found by the executing Court to be less on measurement, was no ground to conclude that the judgment-debtor had encroached upon the plot of the decree-holder. Further, the fact that the area of the plot of the decree-holder was not found to have been encroached upon by the defendant in any way by the Naib Tehsildar while submitting his report Exhibit D.I made in the suit in no way helps the decree-holder. In order to succeed in an application under Order 21 Rule 32 C.P.C., it was incumbent upon the decree-holder to show that some sort of encroachment had been made on his land after the passing of the decree. By merely showing that the area of the plot in question is less at the site it could not be concluded by way of inference that the judgment-debtor had encroached upon a part of plot of the decree-holder. No finding much less a firm finding has been recorded by the executing Court to the effect that the judgment-debtor encroached upon a part of plot of the decree-holder by raising construction or otherwise, and that the construction so raised was of the period subsequent to the date of decree i.e. February 21, 1986. In the absence of such a finding, conclusion arrived at by the executing Court cannot be sustained.

5. As a result, the revision is allowed. Order under revision is set aside and the case is remitted back to the executing Court for decision afresh in accordance with law having regard to the observations made above. No costs.

