

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**C.R. No. 142 of 2005**

**Date of Decision: 24<sup>th</sup> April, 2006**

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**Devinder Singh and others**

**Petitioners**

**Versus**

**Bhupinder**

**Respondent**

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**Coram**

**The Hon'ble Mr. Justice Surjit Singh, J.**

Whether approved for reporting?<sup>1</sup> No.

**For the petitioners:**

**Mr. Kuldip Singh, Senior  
Advocate with Mr. Bimal  
Gupta, Advocate.**

**For the respondent:**

**Mr. Sanjeev Kuthiala,  
Advocate.**

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**Surjit Singh, J. (oral)**

Heard. A decree was passed against the revision-petitioner (hereafter called JD) for demolition of certain structure which he had raised on a portion of Khasra No. 1630 min, measuring 9 bighas 11 biswas during the pendency of the suit, as shown in the report Ext.PW4/A of the Local Commissioner and the plan Ext.PW4/B attached with the said report of the Local Commissioner. Appeals filed against the decree by the JD in the Court of District Judge as also in this Court were dismissed. The DH then filed an execution petition for the demolition

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<sup>1</sup> Whether reporters of local papers may be allowed to see the judgement? Yes.

of the structure. Objections were filed by the JD. It was alleged that the decree was for demolition of structure standing on a portion of Khasra No. 1630 min, measuring 9 bighas 11 biswas and that as a matter of fact, Khasra No. 1630 was a big number having 2 min numbers, both assigned Khasra Nos. 1630 min and that while one number measured 9 bighas 11 biswas, with respect to which suit had been filed and decree passed, the other measured 3 bighas and that structure which was sought to be demolished by execution of the decree, stood on the second portion, measuring 3 bighas.

I have heard the learned counsel for the revision-petitioner. He has urged two points. The first one is based on the aforesaid plea, which was raised before the Executing Court and the second one is that there is nothing on the record that the structure which is sought to be demolished had in fact been raised during the pendency of the suit and that the decree being for demolition of that structure or portion thereof that had been raised during the pendency of the suit, the structure cannot be demolished, unless it is shown that it was raised during the pendency of the suit.

As regards the first point, a reading of the decree passed by the trial Court and as upheld by the two Appellate Courts, leaves no doubt that it (the decree) is for demolition of that structure

which stands on Khasra No.1630 measuring 9 bighas 11 biswas, because the description of the said number and the area is given in the upper part of the decree and in the operative part of the decree, the same is referred to as the suit land. The operative part further reads that the structure which is to be demolished from the suit land is shown in the report Ext.PW4/A and the plan Ext.PW4/B, attached with the aforesaid report. The report was submitted by the Local Commissioner, who was appointed by the trial Court during the pendency of the suit. At no point of time did the JD plead that the structure with respect to which the decree had been sought or was passed, stood on the other min number measuring 3 bighas and not on the min number measuring 9 bighas 11 biswas. The copy of the judgment of the trial Court substantiates this view. It is now too late in the day for the JD to say that the structure sought to be demolished does not stand on that min number which measures 9 bighas 11 biswas but on the other min number which measures 3 bighas.

In any case when the decree specifically directs that the structure standing on the suit land, which means min number measuring 9 bighas 11 biswas, is to be demolished and the JD claims that his structure stands on the other min number, measuring 3 bighas, it can legitimately be presumed that while executing the decree no structure standing on that

min number which measures 3 bighas will be demolished.

For the fore-going reasons, the first point is rejected.

The second point urged by the JD requires outright rejection, because no such objection was raised in the objection petition that was filed in the trial Court. Secondly, when the decree passed by the trial Court specifically says that the structure, as depicted in the report and plan Exts. PW4/A and PW4/B, respectively, is to be demolished, the objection is without merit. Such a question cannot be gone into by the Executing Court at this stage.

It was then urged by the learned counsel for the revision-petitioner that no opportunity was given to the JD/objection petitioner to prove his objections. As already noticed hereinabove, in case the structure stands on a different number, as pleaded by the JD in the objection petition, the same will not be demolished because the decree is in respect of that Khasra No.1630 min, which measures 9 bighas 11 biswas. Under these circumstances, there was hardly any need for affording an opportunity to the JD/revision petitioner to lead evidence to prove his objection.

For the foregoing reasons, the revision petition is dismissed.

**CMP No.182 of 2005**

In view of the dismissal of the main petition, this application is also dismissed. The interim order dated 14<sup>th</sup> November, 2005 stands vacated.

**April 24, 2006 (ss)**

**(Surjit Singh), J.**