

IN THE HON'BLE HIGH COURT OF HIMACHAL  
PRADESH, SHIMLA.

CR 106 of 2008.

**Judgment Reserved on 23.9.2008.**

Date of decision 31.10.2008.

Arvind Kohli and another ...Petitioner.

## Versus

Sumeet Walia and others ...Respondents.

*Coram:*

The Hon'ble Mr. Justice Dev Darshan Sud, J.

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

For the petitioner            Mr. Ravi Bakshi, Advocate,  
with                 Mr.          S.D.Gill,  
Advocate.

For the respondent            Mr. Suneet Goel, Advocate.

Dev Darshan Sud, J.

This revision was filed along with Civil Revision Petition 111 of 2008 between the same parties. In that petition, the petitioners herein who are the judgment debtors had challenged the dismissal of application for amendment of the decree passed against them. The facts are not being

<sup>1</sup> Whether Reporters of Local Papers are allowed to see the judgment? Yes.

repeated here as I have charted the entire course of litigation between the parties in Civil Revision 111 of 2008 between the same parties and for the same property holding that the petitioners herein are guilty of gross abuse of the process of law.

To recapitulate briefly, suit filed by respondent No. 1 Sumeet Walia, who is a paraplegic, was decreed by the learned Additional District Judge on 12.1.2006. Appeal preferred by the judgment debtors herein to this Court being RFA 149 of 2006 was dismissed by this Court on 2.8.2006. CMPMO No. 38 of 2008 filed by the petitioners/judgment debtors and others seeking review of this judgment was also dismissed on 7.3.2008 with the Court holding that the petition was nothing but an attempt to exclude the decree holder from the enjoyment of the fruits of the decree. Objection petition under Section 47 of the Code of Civil Procedure preferred by the judgment debtors reagitating the controversy which had already been settled was dismissed on 25.6.2007. The precise ground taken was that the judgment debtors - petitioners herein were entitled to the construction on a portion on the land which had been decreed in favour of the decree holder. Dismissal

of these objections was confirmed by this Court on 6.8.2007 in Civil Revision 112 of 2007. During this period, review petition was preferred by the judgment debtors before the learned Additional District Judge seeking review of the judgment passed in the civil suit. How and why this petition came to be filed is unclear as the judgment was affirmed by this Court and review against that dismissed as noticed. However, even this review petition was dismissed on 3.3.2008. Undeterred, the petitioners moved the trial Court again by a petition under Sections 151 and 152 of the Code of Civil Procedure on 11.3.2008 seeking amendment of the decree. This petition was dismissed on 7.5.2008 and Civil Revision 111 of 2008 has been preferred which has also been dismissed by a separate order. The obduracy of the petitioners - judgment debtors persisted and civil suit 73/1 of 2007 was preferred in the Court of the learned District Judge again seeking a decree for the constructed portion of khasra No. 278 which suit was abandoned as unconditionally withdrawn on 11.7.2008.

This revision petition has been resisted by the decree holder - respondent No. 1 on a number

of grounds. The record shows that at one point of time, he had even prayed for police protection as he was fearing for his safety from his opponents. He is a paraplegic and had expressed his helplessness in looking after his interests. CMA 74-S/6 of 2008 was preferred by the Decree Holders under Section 15(2) of the Contempt of Courts Act, 1971 praying for initiation of contempt proceedings against the judgment debtors for abusing the process of law by repeatedly trying to agitate/ reagitate matters which had already attained finality after adjudication.

Civil suit 73/1 of 2007 was instituted in the Court of the Civil Judge, Court No. 1, Shimla on 22.12.2007 by both the judgment debtors herein praying for a decree of injunction restraining the decree holders from interfering in the peaceful possession and ownership of land comprised in khasra No. 278 and the constructed portion standing thereon. This suit was unconditionally abandoned by them on 11.7.2008 when a statement was made that the plaintiffs (petitioners herein) want to withdraw the suit and do not wish to pursue the matter any further.

The present revision has been preferred against the order of the learned executing Court which has allowed the application of the decree holder for correction in the cause title for inclusion of the constructed portion on khasra No. 278. The learned Court holds that a decree for possession of khasra No. 278 along with other khasra numbers has been passed and the plaintiff was entitled to all that land along with structures. As a corollary, the construction on that khasra number was also to go with the land. Irrespective of the reasoning of the learned trial Court, the judgment debtors - petitioners herein had agitated the point regarding the constructed portion etc. in the review petitions preferred both before this Court and the learned trial Court. In the Civil Revision preferred by them against the order passed by the learned Executing Court in proceedings under Section 47 of the Code of Civil Procedure, again the same point had been agitated, that is the decree is inexecutable because the decree holder is not entitled to the constructed portion; civil suit claiming the same relief for injunction against the decree holder for not interfering in khasra No. 278

and the constructed portion thereon was also filed and abandoned.

Looking to the sequence of the litigation and the successive judicial determinations having been made on the point as to whether the petitioners herein are entitled to any portion of khasra No. 278 or any construction raised thereon and which have attained finality after adjudication and abandonment, I find that the learned Court has not committed any error of jurisdiction as the matter regarding the constructed portion on khasra No. 278 has already attained finality, wherein the claim of the judgment debtors has been dismissed in all the proceedings instituted by them, viz objection petition under Section 47 of the Code of Civil Procedure, as affirmed by this Court in Civil Revision 112 of 2007, in CMA 121 of 2008 as preferred before the learned trial Court under Sections 151 and 152 of the Code of Civil Procedure which application also stands dismissed and last but not the least, in Civil Suit 73/1 of 2007 which has been withdrawn unconditionally. I do not find that any jurisdictional error has been committed by the learned trial Court. Rather, the course of

litigation shows obstinate attempts of the judgment debtors to claim that which has already attained finality and never challenged in appeal. This revision petition is accordingly dismissed. There shall be no order as to costs. All pending applications shall stand dismissed.

October 31, 2008 (PC).

(Dev Darshan Sud), J.