

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

Civil Revision No.111 of 2008.  
Judgment Reserved on: 23.9.2008.

Date of decision: 31.10.2008.

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**Amit Kohli & Others**

**...Petitioners**

**Versus**

**Sumeet Walia & Others**

**...Respondents**

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*Coram*

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

*Whether approved for reporting ?<sup>1</sup>*

**For the Petitioners:           M/s. Ravi Bakshi and S.D. Gill,  
Advocates.**

**For Respondent No.1:       Mr. Suneet Goel, Advocate.**

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**Dev Darshan Sud, J.**

This revision has been preferred by the Judgment Debtors against the order dated 7.5.2008 passed by the learned executing Court in an application under Section 151 read with Section 152 of the Code of Civil Procedure having been filed in the review petition preferred by the petitioner herein.

The application under Sections 151 and 152 of the Code of Civil Procedure was moved by the Judgment Debtors Arvind Kohli and Amit Kohli (petitioners herein) praying that correction be made in the judgment and decree passed in favour of the Decree Holder. The

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgement?*

learned Court holds that not only is the application vague, but the application for amendment of the decree does not show as to what the applicants-Judgment Debtors want. The first two paragraphs of the judgment hold:-

*"This order disposes of an application under Section 151, 152 C.P.C. The pleadings as contained in para 1 to 5 and also in the prayer clause are vague. The prayer clause is reproduced below:-*

*"It is, therefore, respectfully prayed that the present application may kindly be allowed the clerical and arithmetical mistake which is apparent on the face of record that at the time of calculation of DH/Plaintiff has wrongly been allotted 4-6 bighas of land in Khasra No.278 whereas he is entitled for 3-19 bighas of land in the said Khasra No. as per Will which was the actual subject matter of the suit, which was filed by the DH/Plaintiff keeping in view the facts and circumstances stated in this application, and keeping in view the equity and to meet the ends of justice"*

**2.***One is not able to know what the applicants really want to amend. But from the cause title one is able to gather what the applicants want amend. The cause title is reproduced below:-*

*"Application under Section 151 of CPC read with Section 152 of the CPC for the amendment of judgment/decreed of this Hon'ble Court wherein the DH/Plaintiff has been given 4-6 biswas whereas he was entitled for 3-19 bighas in Kh.No.278 as per stipulation of the Will, because a part of land comprised in Kh.No.278 measuring 7 biswas alongwith house constructed over the land had been bequeathed to the petitioners by their grand father out of total land of this Kh.No.but this Court of first instance did not look into the matter and issued the warrant of possession including the part of the land given to the petitioners in Kh.No.278. And the respondent No.1 trying to grab the share of the petitioners under the garb of the judgment passed by this Hon'ble Court."*

This is one case where repeated, obstinate and obdurate attempts are being made by the Judgment Debtors to resist the execution of the decree. New and novel methods are being adopted by them to approach the trial Court and this Court time and again to thwart the Decree Holder from reaping the fruits of the decree.

It is undisputed before me that the Decree Holder-respondent filed a suit for possession of the suit land on the basis of a will executed by his

maternal-grand-father in his favour. Civil Suit No.5 of 2000 was instituted in this Court which was later-on transferred to the Court of learned District Judge and was decreed on 12.1.2006 in favour of the respondent-Decree Holder. Regular First Appeal (RFA No.149 of 2006), preferred by the petitioners herein, was dismissed by this Court on 2.8.2006 upholding the judgment and decree in favour of the Decree Holder. Thereafter a Review Petition was preferred by the Judgment Debtors before the learned Additional District Judge which was dismissed on 3.3.2008. Undaunted the petitioner-Judgment Debtors filed CMPMO 38 of 2008 in this Court under Article 227 of the Constitution of India read with Order 47 Rule 1 of the Code of Civil Procedure with a prayer to review the judgment passed by this Court in RFA No.149/2006 which was dismissed on 7<sup>th</sup> March, 2008 holding, "it is apparent that the petitioners are only trying to delay the execution of the decree in one ground or the other..." Not satisfied, the Judgment Debtors invoked the provisions of Section 47 of the Code of Civil Procedure challenging the execution proceedings which application was dismissed by the executing Court; Civil Revision No.112 of 2007 was preferred in this Court against that order which was also dismissed on 6.8.2007. The objection taken therein was that some construction has been raised by the Judgment Debtors on the suit land which would render the decree passed as in executable.

In-fact, this point was being urged in all the proceedings in appeal, review(s) and revision. But still not deterred, the Judgment Debtors filed Civil Suit No.73/1 of 2007 praying for a decree of mandatory injunction for the same constructed portion, subject matter of the appeal, reviews and objection. This suit was dismissed as withdrawn on 11.7.2008.

This was not the end of the matter. CMA 74-S/6 of 2008 was preferred by the Decree Holder-respondent in the Court of the learned Additional District Judge, Shimla, under Section 15(2) of the Contempt of Courts Act, 1971 for referring the matter to this Court for initiating proceedings of Criminal Contempt. The learned Court noticed the entire sequence of litigation from the filing of the suit, dismissal of the appeal, dismissal of two review petitions preferred before the learned trial Court as also this Court, dismissal of the petition under Section 47 of the Code of Civil Procedure and affirmation of this order by this Court in Revision proceedings and lastly dismissal of the application for amendment of the decree. The Court vide its order dated 7.7.2008, relying upon the decision in ***The Advocate General, State of Bihar vs. M/s. Madhya Pradesh Khair Industries and another, AIR 1980 SC 946***, holding that abuse of process amounts to Contempt of Courts in certain situation, allowed the application. The Decree Holder had been prompted to file an

application for initiation of contempt proceedings on the petitioner herein moving an application for amendment of the decree and repeated attempts to agitate and re-agitate settled matters. This petition under Article 227 of the Constitution has now been preferred challenging the order of the trial Court declining to amend the decree. There is no provision of law which the petitioner herein has not exhausted to delay the execution of the decree whether there is any merit in the petition preferred by the Judgment Debtors or not. An overt attempt has been made by the petitioner herein to invoke the provisions of law and to agitate and re-agitate matters already settled on merits. The legal system cannot be subjected to such gross abuse and manipulation by a litigant trying to re-agitate and challenging matters which have already attained finality.

I find that this is a case where the Judgment Debtors are repeatedly abusing the process of law under the garb of exercising purported rights granted to them by law. The same point cannot be agitated and re-agitated over and over again. No ground much less a ground under Section 152 of the Code of Civil Procedure has been pleaded or established on the record but a clear attempt has been made to reopen the controversy which has already been settled by this Court. If the Judgment Debtors were dissatisfied by the judgment and decree, as affirmed in appeal, nothing stopped them

from challenging the decree before the Apex Court. Instead, time and again petitions/miscellaneous applications or other proceedings are being initiated for making the judgment and decree rendered inexecutable.

In the facts and circumstances, I find that no error of jurisdiction has been committed by the learned trial Court. The learned Court having found as a fact that no ground was made out under Section 152. This is a fit case where costs should be imposed on the petitioners for repeatedly abusing the process of law. This petition is dismissed. Costs on the petitioners assessed at Rs.5,000/-.

**October 31,2008.**  
**(aks)**

**(Dev Darshan Sud)**  
**Judge.**