

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.76 of 2014

Date of decision: 31.12.2014

Kanta and others

...Petitioners/JD

Versus

Ramesh Dutt and others

.... Respondents./DH

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?.¹

For the Petitioners:

Mr. R.K.Bawa, Sr. Advocate, with
Mr. Jeevesh Sharma, Advocate.

For the Respondents:

Mr. Suneet Goel, Advocate.

Sureshwar Thakur, J. (Oral)

The revisionists/judgement debtors suffered a decree for permanent prohibitory injunction qua the suit land comprised in Khasra No. 152/139/129/1, 130/1 and 130/2. The decree holders moved an application under Order 21 Rule 32 CPC before the learned Executing Court for execution of the decree for permanent prohibitory injunction rendered qua the suit land by the learned Court of first instance. The said application came to be allowed. The revisionists/JDs before this Court contend that the demarcation report comprised in Ext.AW-2/A on strength whereof a conclusion was formed by the learned Executing Court while adjudicating the application under Order 21 Rule 32 CPC preferred by the petitioners herein that the applicants-respondents are in possession of the suit land comprised in the aforesaid Khasra

Whether the reporters of the local papers may be allowed to see the Judgment? .

numbers and they are hence necessitated to be enjoined to vacate it and on its vacation deliver its possession to the decree holders/respondents herein is, infirm and ought not to have been imputed probative force as has been accorded to it by the learned Executing Court inasmuch, as, when the demarcating officer had not carried out the demarcation of the suit property in accordance with the instructions mandated in the H.P. Land Records Manual, any disclosure therein stood vitiated. The said submission addressed before this Court by the learned senior counsel for the revisionists/petitioners herein/Judgement debtors is extremely feeble and weak in the face of their being a presumption in law that all officials acts as is the official act of demarcation carried out by a public servant, being an official of the revenue department having been carried out in accordance with law. Therefore, the presumption attachable to the public duty performed by the revenue official who carried out the demarcation of the suit property also concomitantly ingrains it with legal nuance of the revenue official who carried out demarcation of the suit property having carried it out in consonance with and in compliance with the mandate enshrined in the H.P. Land Records Manual. Therefore, Ext.AW-2/A cannot be construed to be imbued with any vitiation. It was open for the petitioners herein to lead cogent evidence of probative worth before the learned Executing Court pronouncing upon the fact that the report of the demarcating officer is discardable, inasmuch, as,

the demarcating officer having not carried out demarcation of the suit property in accordance with the enjoined mandate enshrined in H.P.Land Records Manual. Even though a perusal of the record does demonstrate that the judgement debtors had concerted to overwhelm the legal efficacy of the report of the demarcating officer comprised in Ext.AW-2/A by theirs taking to prefer objections qua its tenability and legal succor before the learned Executing Court. However, such objections remained unsubstantiated. A perusal of the file also demonstrates that the petitioners herein/Judgement Debtors omitted to despite several opportunities having been afforded to them lead evidence before the Executing Court pronouncing upon the factum of the objections qua the report of the demarcating officer being sustainable. Obviously, such omission constrains this Court to conclude that the petitioners herein/JDs were not in possession of the any evidence so as to falsify the report of the demarcating officer. Rather it also constrains an inference that hence they accepted the demarcation of the suit property as carried out by the demarcating officer on consummation whereof he rendered his report comprised in Ext.PW-2/A. With formidability, it can be hence concluded that the judgement in revision before this Court does not suffer from any illegality, impropriety, perversity or absurdity nor also the executing court has omitted to take into consideration any germane material. Rather, for the foregoing reasons it is apparent that the presumption of truth attached to the

demarcation report prepared by revenue official in the discharge of or performance of his public duties having remained un-displaced it carries preponderant force as has been tenably imputed to it.

31st December, 2014
TM

(Sureshwar Thakur)
Judge