

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CR 4587 of 2015

Date of Decision: July 23, 2015

Harbans Singh

.....Petitioner

Vs.

Hakikat Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Arvind Kashyap, Advocate  
for the petitioner.

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**M.M.S. BEDI, J. (ORAL)**

It is an admitted fact that the respondents have obtained a decree for joint possession from Civil Court for separate possession by partition of land in dispute which is 5 kanals 10 marlas being 1/3<sup>rd</sup> share of the total land measuring 16 kanals 10 marlas. A perusal of the decree sheet annexure P-3 indicates that the suit of the plaintiff- respondents was decreed for joint possession of the suit land measuring 5 kanals 10 marlas being 1/3<sup>rd</sup> share of the total land measuring 16 kanals 10 marlas, mentioned in the heading of the plaint. The plaintiff was held entitled to participate in the partition proceedings being the vendee of original co-owner Kesar Singh.

The Execution application was filed by the respondents in the year 2005. Rightly or wrongly police help was also sought for by filing application vide annexure P-6. Counsel for the respondents had made a statement that the respondents did not want to proceed with the execution application and withdrew the same. Two years thereafter an application dated November 27, 2011 (annexure P-9) was filed by the respondents for recalling the order dated August 31, 2009. Vide an interim order dated October 11, 2012, counsel for the respondents had informed the Court that partition proceedings are pending before the Revenue Court. The Executing Court adjourned sine die the execution proceedings. Now the grievance of the judgment debtor- defendant/ petitioner is that vide annexure P-1 dated March 24, 2015, the restoration of the execution application has been allowed for proceeding in accordance with law.

Learned counsel for the petitioner submits that the original decree being for joint possession of the 1/3<sup>rd</sup> share, the preliminary decree cannot be executed. Partition, if any, could be undertaken by Revenue Court. The petitioner has got an apprehension that in the garb of the execution of the decree for joint possession, an attempt will be made to take the forcible possession of 5 kanals 10 marlas of land. Revival of the execution application withdrawn on August 31, 2009 has also been challenged.

I have heard learned counsel for the petitioner and carefully gone through the contents of the decree passed in favour of the decree

holder- respondents which clearly indicate that the decree is only for joint possession of 5 kanals 10 marlas of land out of 16 kanals 10 marlas. Pendency of the partition proceedings before the Revenue Court is also an admitted fact. As per law, while passing a preliminary decree for partition, a Civil Court is required to determine the extent of the rights of a co-sharer which can be enforced by partition by seeking final decree or by approaching the revenue authorities, as the case may be.

In the present case the apprehension of the petitioner is that in the garb of execution application having been restored, the decree holder would take coercive means to take possession of the property from the petitioner. The said apprehension appears to be misconceived as the rights of the parties have been determined by granting a decree for joint possession which is to be implemented only after the final decree or after the actual partition by the revenue authorities. There does not appear to be any illegality in the impugned order reviving the execution application as it is always open to the decree holder to file any number of execution applications and the principle of res judicata does not apply till the decree is executed. No doubt the revival of the execution application has been done by the Executing Court after entertaining an application after expiry of two years of the withdrawal but no illegality can be found in the impugned order reviving the execution application as the second execution application is also not barred under law. No ground is made out for interference in the order

passed by the Executing Court permitting the revival of the execution application.

Petition is dismissed without prejudice to the rights of the petitioner to object the execution if it is contrary to the rights determined regarding the co-sharers in the property in dispute by partition.

July 23, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE