

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.7731 of 2015

Date of decision: 19.11.2015

Jasbir Singh

.....Petitioner

Versus

Baljinder Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Puja Chopra, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 21.07.2015 passed by the Additional Civil Judge (Senior Division), Jagraon, whereby application filed by the petitioner under Section 144 CPC for restoration of possession, has been dismissed.

On 06.10.2012 execution petition with regard to the judgment and decree dated 30.10.2008 stood satisfied and possession of the suit property was given to decree holder-respondent No.1. Pursuant to an application made by the decree holder, vide order dated 09.04.2012, a direction was given to the revenue authorities to deliver the possession of suit property by breaking open the locks of premises. The said order was passed as per Order 21 Rule 35 (3) CPC, which reads as under:-

“(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

Grievance of the petitioner is that he had purchased the land in

dispute from one Niranjan Singh during the pendency of the suit and he has become co-sharer thereof. Without partition proceedings, the judgment and decree dated 30.10.2008 could not be executed.

This aspect has been considered by the Court while deciding the application and it has been observed that the claim of the applicant-petitioner was hit by the principle of *lis pendens*. The petitioner has become co-sharer in the suit property during the pendency of the suit. Another fact, which has been taken into consideration while dismissing the application is that vide sale deed dated 27.03.2012, the petitioner further sought to alienate his share out of khasra numbers in question in favour of one Ranjit Singh.

Learned counsel for the petitioner has clarified that this sale deed pertains to small portion of the land in dispute.

However, execution has been carried out with reference to measurement of land as detailed in agreement dated 15.08.2000. The objection of the petitioner has to be rejected, as during execution of the judgment and decree, a co-sharer cannot take the plea that the land in his possession should not be executed till partition proceedings are carried out.

In view of the above, no ground is made out to interfere in the impugned order.

Dismissed.

19.11.2015
ajp

(RITU BAHRI)
JUDGE