

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

CWP No.21796 of 2015 (O&M)
Date of Decision: 17.11.2015

Balbir Singh

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rajesh K. Kataria, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

CM NO.14921 of 2015

Application is allowed.

CWP No.21796 of 2015

This petition is filed for issuance of a writ in the nature of mandamus directing respondent No.2 to demarcate the land comprising in Khasra No.509 and 510 prior to implementation of warrant of possession issued by the Executing Court in Case No.40 of 2010.

In brief, respondent No.3 filed a suit for declaration and possession. The said suit was dismissed. However, it was partly allowed in appeal by the District Judge, Kaithal and as per the decree, which is attached as Annexure P-10, the suit filed by the plaintiff/respondent No.4 was decreed for possession of 91.14 square yards of the plot bearing MCK NO.1195-A/18 which is bounded as East – land of Naranjan Singh (in possession of Subhash), West –

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I attest to the accuracy and
authenticity of this document

property of M/s Sant Machinery Store, North – Udyog Marg and South – Property of Ch. Som Parkash, Advocate. However, the suit filed by the plaintiff for seeking declaration of the sale deed executed in favour of defendants was dismissed. The plaintiff filed the execution application under Order 21 Rule 11 of the Code of Civil Procedure, 1908 [for short ‘the CPC’] in which the petitioner filed objection and averred that before delivering the possession, the possession of respondents Nos.3 to 5 may not be disturbed by the Court until and unless it is determined that the land in question is not part of Khasra No.509 and 510 situated in Village Patti Gaddar, Kaithal. The said objection has been dismissed by the Executing Court vide its order dated 9.7.2015 in which it has been categorically observed that *“therefore, in view of the above discussion, there remains no doubt with regard to the identity of the property which fell to the possession of plaintiff and of defendants”*. The petitioner is afraid of that while executing the decree passed by the District Judge for the purpose of delivering possession to the decree-holder out of plot bearing MCK No.1195-A/18 to the extent of 19.14 sq. yards, the possession of the petitioner out of land falling in khasra No.510 in Village Patti Gaddar, District Kaithal, may not be disturbed. Therefore, the petitioner filed an application to the Tehsildar, Kaithal for the purpose of demarcation but the said application has not been decided either way.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that the remedy lies with the petitioner in filing of an appeal against the order passed by the Executing Court on 9.7.2015 as the objection raised by the petitioner has been dealt with by it rightly or wrongly and hence, the

petitioner has no right to file an application as the matter in issue is already before the Executing Court, who is executing Civil Court decree passed by the District Judge on 27.4.2009.

In view thereof, the present petition is misconceived and hence, the petitioner is relegated to his remedy of filing appeal/revision against the order passed by the Executing Court, if so advised.

Disposed of.

17.11.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE