

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

CR No.7413 of 2015

Date of decision : 27.05.2016

Krishna Devi

...Petitioner

Versus

Smt. Chameli Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Som Nath Saini, Advocate for the petitioner.

Mr. M.S. Randhawa, Advocate for respondent Nos.1 to 4.

Mr. R.N. Lohan, Advocate for the respondent No.5.

AMIT RAWAL, J. (Oral)

The petitioner-Decree Holder is aggrieved of the impugned order, whereby execution application seeking enforcement of the judgment and decree dated 23.11.1994, has been dismissed.

Mr. Som Nath Saini, learned counsel appearing on behalf of petitioner submits that suit for permanent injunction was filed against the respondent-Judgment Debtor and the same was decreed by the trial Court vide judgment and decree dated 05.02.1993, whereby respondent Nos.1 to 4 were restrained from raising construction over any specific part of the khasra No.1280 until and unless it is partitioned. He submits that respondent violated

the aforementioned decree by forcibly raising the boundary wall on the aforementioned khasra numbers on a specific portion falling on Narnaul-Mohindergarh Road having higher value without seeking partition. The trial Court erroneously dismissed the execution application on such premise and construction if raised would certainly subject to the partition of that property.

He submits that there is no limitation for seeking execution of the judgment and decree under Order 21 Rule 32 of the Code of Civil Procedure and thus urges this Court for setting aside of the impugned order.

Mr. R.N. Lohan, and Mr. M.S. Randhawa, learned counsel appearing on behalf of respondents submits that limitation to seek execution of the decree is 12 years, whereas decree of the trial Court of 1993 merged in lower Appellate Court in 1994 in case petitioner-decree holder was keen enough to prevent the violation of the Decree ought to have moved the application for partition of the property. Having not taken any steps, rightly so, the application has been dismissed by observing that the construction if any shall be subject to the partition.

I have heard learned counsel for the parties and appraised the paper book and of the view that judgment and decree of the Courts below have to be honoured and respected and cannot be allowed to be violated with impunity. The trial Court ought not to have dismissed the execution application by observing that the construction raised was subject to the partition of the property particularly party has raised construction on the land having been more in value. It should have imposed a rider qua the risk and peril of the person intending to raise construction. In case the respondents-defendants were keen to raise construction, nothing prevented them to move application seeking partition instead of blaming opposite party. In a joint holding, when there is discord,

another party is keen to raise the construction, appropriate steps should have been taken. I am of the view that application should not have been dismissed in the manner as has been observed in the impugned order.

For the foregoing reasons, impugned order is set aside.

Execution application is restored.

Revision petition is resultantly allowed.

The trial Court is directed to decide the execution application in accordance with law.

27.05.2016

pawan

**(AMIT RAWAL)
JUDGE**