

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

CR No.2928 of 2018 (O&M)

Date of decision:21.11.2018

Vinod Kumar

... Petitioner

Vs.

Zile Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.V.D.Sharma, Advocate
for the petitioner.

AMIT RAWAL J.

The petitioner-decree holder has not been successful in seeking execution of the judgment and decree dated 06.02.1999 in an application filed under Order 21 Rule 32 of Code of Civil Procedure.

As per the aforementioned judgment and decree, judgment debtors were restrained from ousting the plaintiff forcibly from the land comprising in killa no.80//14/2, 15, 81//11 and 19. The aforementioned judgment and decree had also attained finality in appeal preferred before the Lower Appellate Court and before this Court, vide judgments and decrees dated 24.09.1999 and 27.01.2009. However, during the pendency of regular second appeal, judgment debtors started interference into peaceful possession and raised construction over the suit land without any right, title or interest.

The judgment debtors objected to the application denying the alleged violation of the judgment and decree or extension of threat, much less construction.

On preponderance of the evidence, the trial Court dismissed the application by holding that plaintiff miserably failed to prove on record the alleged violation of the aforementioned judgment and decree.

Mr. V.D.Sharma, learned counsel appearing on behalf of the petitioner submitted that petitioner had placed on record umpteen number of documentary evidence to establish the alleged violation. Non-proof of photograph cannot be a ground for rejection of the application. The partition proceedings with regard to aforementioned khasra are still pending adjudication and in such circumstances, the respondents cannot be permitted to forcibly take the possession. Even the application of the respondents for correction of khasra girdawari has been adjourned sine die on account of pendency of the partition proceedings.

I am afraid the aforementioned argument is not sustainable, for, it is too late in a day for the party to establish the violation of the judgment and decree in the absence of any direct and cogent evidence. The partition proceedings had already made certain headway. It would be in the fitness of things, the parties ought to have established their possession claiming their respective rights. The plaintiff has not sought the assistance of the Local Commissioner to establish the construction which was emphatically denied by the defendants. Even the date of alleged dispossession is conspicuously wanting. There was stark contradiction in the testimony of PW2 and PW3,

therefore, the plaintiff miserably failed to establish the alleged violation.

No ground is made out for interference in the impugned order.

The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No