

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

CR No.6953 of 2017 (O&M)

Date of decision:16.05.2018

Kuldeep Singh

... Petitioner

Vs.

Amarjeet Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Satinder Khanna, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

C.M.No.9785-CII of 2018

The application is allowed, subject to all just exceptions.

Judgment and decree dated 27.2.2004 is taken on record.

CR No.6953 of 2017 (O&M)

The petitioner-plaintiff is aggrieved of the impugned order dated 16.03.2017, whereby, the application under Order 21 Rule 32 read with Section 151 CPC for attaching the property of the respondents and sending them to the prison for non-compliance of the judgment and decree dated 27.02.2004, has been dismissed.

Mr. Satinder Khanna, learned counsel appearing on behalf of the petitioner-plaintiff submits that plaintiff instituted the suit bearing No.680 dated 02.11.1998 against 10 defendants from alienating any specific portion of the land measuring 8B-3B-14B situated in village Dakha-1,

Tehsil and District Ludhiana on the premise that the property at the instance of the parties were in joint ownership which was proved through jamabandi for the year 1995-96, Ex.P1. On the basis of the aforementioned revenue record which carried presumption of truth and remained un-rebutted, the trial Court decreed the suit in the following manner:-

“5. In view of the above discussion, present suit of plaintiff is decreed Ex parte, however with no order as to costs in view of fact in hand. Defendants are restrained from alienating any specific portion of land in dispute detailed in head note of the plaint, till the land is partitioned by metes and bounds. Decree sheet be prepared and file be consigned to record room.”

However, a cause of action arose to the plaintiff to institute the application on 24.02.2011 by acquiring the knowledge that the defendants had violated the aforementioned restraint order for execution of the sale deeds dated 14.12.2007, 17.12.2007, 21.10.2009, 23.08.2010 and 08.09.2008 which were during the subsistence of said order, for, the suit land had not been partitioned amongst the co-sharers but reflection of selling of specific khasra number in the sale deed was deliberate attempt on behalf of the defendants to circumvent the injunction. It was incumbent upon the defendants to place on record the partition proceedings, for, a specific defence taken in the written statement was that suit property had already been partitioned. The subsequent vendees also gave same version by saying that suit property was partitioned in the year 2009. However, no such document has been placed on record, therefore, there was no occasion for

the trial Court to dismiss the aforementioned application.

I have heard the learned counsel for the petitioner-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Khanna, for, jamabandi for the year 2010-11 Ex.P2/4, running into seven pages revealed that there was entry with regard to the aforementioned sale deeds showing specific khasra number. No document had been placed on record on behalf of the plaintiff to prove otherwise. The plaintiff should have summoned the official from the revenue department to establish whether there was any partition or not. Having failed to discharge the onus with regard to partition, it cannot be said that injunction decree was violated.

As an upshot of my findings, I am of the view that there is no illegality and perversity in the order under challenge, much less, the same cannot be said to have been passed without jurisdiction.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No