

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

CR No.1516 of 2012 (O&M)  
Date of decision : 14.01.2019

Mangat Ram and others

...Petitioners

Versus

Dallan and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Arun Jain, Sr. Advocate with  
Mr. Keshav Pratap Singh, Advocate for the petitioners.

Mr. Adarsh Jain, Advocate for respondent No.1.

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**ANIL KSHETARPAL, J. (ORAL)**

This revision petition has been preferred by the Judgment Debtors against the order passed by the Executing Court. The operative part of the order reads as under:-

*“21. In view of my findings on aforesaid issues, present execution petition is hereby allowed with the direction to the respondents/JDs to remove the construction of shops raised by them in violation of judgment and decree dated 12.02.1994 at their own expenses within a period of two months from passing of this judgment, failing which respondents/JDs shall be liable for the civil imprisonment for one month. Memo of cost be prepared. There is no order as to cost. File be consigned to the record room after due compliance.”*

It may be noted that two plaintiffs namely Balbir Singh and

Khiali Singh, filed a suit for permanent injunction claiming to be co-sharers of land comprised in Khewat No.1719, Khasra No.1352 (4 kanals 1 marla) situated within the revenue estate of District Palwal. They claimed that they are co-owners in Shamlat Patti Gorva of Palwal and the defendants be restrained from raising any construction over the property in dispute. The trial Court decreed the suit vide judgment and decree dated 12.02.1994, while observing as under:-

*“20. Keeping in view my findings on the aforesaid issues, the suit of the plaintiffs succeeds and the same is hereby decreed. Defendants are hereby permanently restrained from raising any construction in the suit land and from changing the nature of the suit land without the consent of the co-sharers of the suit land mentioned in para No.1 of the plaint or without getting the same partitioned. Parties are left to bear their own costs. Decree-sheet be drawn accordingly and file be consigned to the records.”*

The defendants are alleged to have started construction after getting the building plan sanctioned from the Municipal Committee which forced the Decree Holders to file an execution petition. The execution petition was withdrawn by the Decree Holders vide order dated 17.03.1998 passed by Civil Judge (Junior Division), Palwal. The same is extracted as under:-

*“Present:- Sh. Fateh Singh, Adv. for D.H.*

*Execution taken up today on application. Statement of D.H. Recorded. In view of statement execution petition is dismissed as withdrawn. File be consigned to record room.*

*Announced : 17.3.98*

*Sd/- (Mrs. Anshu Sukla)  
Civil Judge (Jr. Divn.)  
Palwal 17.3.98”*

Dallan-respondent, claiming to be co-sharer in the joint khata consisting of 365 kanals and 17 marlas which consists of 1816 co-owners, filed an execution petition complaining of violation of the decree. The Executing Court dismissed the execution petition on the ground that since Dallan was not a decree holder, therefore, execution petition was not maintainable. The aforesaid order passed by the Executing Court was challenged in this Court and the revision petition was allowed while returning a finding that Dallan is also entitled to maintain the execution petition.

The Executing Court has again passed the order while recording a finding that Dallan is entitled to land measuring 3 marlas in Shamlat Patti Gorva of Palwal and, therefore, the decree passed by the Court granting injunction has been violated, hence, direction was issued to remove the construction.

This Court has heard the learned counsel for the parties at length.

It is undisputed that total area of the entire khata is 375 kanals and 19 marlas which has 1816 co-sharers/co-owners. Dallan, as per the finding of the Court, is only entitled to land measuring 3 marlas. Learned Executing Court has not even adverted to the fact that whether Dallan is in possession of the aforesaid land measuring 3 marlas or not. Still further, although, the decree was passed in February, 1994, till date, no one has taken steps to partition the property. The entire property is not now part of urban area i.e. city of Palwal.

No doubt, the decree as passed in the year 1994 puts an

impediment on the defendants to raise construction except with the consent of the co-sharers, however, the decree has to be interpreted in a manner that it serves a purpose. The restriction as placed by the trial Court cannot be interpreted in a manner that the development of the area is altogether stopped. In the present case, the defendants-petitioners (Judgment Debtors) first faced the execution petition filed by the Decree Holders (original plaintiffs in the suit). The aforesaid execution petition was withdrawn on 17.03.1998. It is further not in dispute that the building plan was sanctioned by the Municipal Corporation. Still further, if one calculates the share of Dallan, his share would turn out to be 0.8% in the entire khata. As noticed above, there is no finding by the Executing Court that Dallan is not in possession of land to which he is entitled to.

In such circumstances, the order under challenge is set aside.

The Executing Court is directed first to record a finding that whether Dallan is in possession of the land he is entitled to and thereafter re-decide the matter afresh.

Parties through their counsel are directed to appear before the Executing Court on 01.02.2019.

In view of the above, the present revision petition is disposed of.

**14.01.2019**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**