

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

CR No.2079 of 2018 (O&M)

Date of Decision:27.1.2020

Harbans Singh

... Petitioner

Versus

Joga Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.C.L.Verma, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

1. By way of this petition filed under Article 227 of the Constitution of India, the plaintiff/petitioner has assailed the order of the trial court dated 13.11.2017 dismissing the execution application of the petitioner by accepting the objections of the third party/co-sharer.

2. I have heard learned counsel for the petitioner. He contends that the impugned order is contrary to the decree. I find no merit in this contention for the reason that the decree had directed the defendants to remove the dung heap by issuing a mandatory injunction to the defendants to restore the site shown in red colour i.e. BIFE in the site plan (Ex.P1) to its original position by removing the Dher/manure heaps, within one month from the date of passing of the decree.

3. However, the decree was made conditional on determination of rights to land beneath the Dher/manure heaps and its final status only in a suit for partition dividing the joint khewat among the co-sharers. Due to death of defendant-Dilawar Singh and non-impleading of his LR's, third party filed

4. In my considered view, the objections have been allowed for proper reasons since the decree could not affect the party against whom it was not obtained. It is not disputed that partition proceedings have not been instituted so far either by the LRs of the deceased defendant or anyone else among the co-sharers. This position remains even after the orders passed by this Court in the RSA filed by Joga Singh-defendant.

5. There is no assertion in this petition regarding the status of the dung heap till today and its removal or not, which is the heart of the matter. There is also no assertion in this petition that the site has been restored to its original character subject to determination of civil rights of the parties which obviously would mean through partition, which proceedings have not been started so far. Accordingly, it cannot be said that there is any violation of the decree by the remaining contesting defendant-Joga Singh.

6. In view of the above position, I find no merit in this revision warranting interference petition which is accordingly dismissed in limine.

27.1.2020
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes/No