

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-5897 of 2018(O&M)  
Date of decision: 19.07.2022

Harikesh and others

...Petitioners

Versus

Puran Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:** Mr. Rakesh Gupta, Advocate  
for the petitioners.  
Mr. Saurabh Garg, Advocate  
for respondent no.1 and 2.

**ANIL KSHETARPAL, J (Oral)**

The Executing Court has sentenced the petitioners herein to civil imprisonment for a period of one month after observing that they have violated the restraint order passed on 10.01.2008, by the Court. This revision petition has been filed assailing its correctness. On 06.09.2018, the operation of the impugned order was stayed which continues to operate.

Some facts are required to be noticed.

Late Sh. Diwana had two sons, namely Sh. Ronak and Sh. Sher Singh. He was allotted land measuring 26 kanals, however, the conveyance deed came to be executed in favour of his children. The decree holders are the children of Sh. Sher Singh, whereas, the petitioners are the respective husbands of the subsequent purchasers from Sh. Ronak.

Children of Sh. Sher Singh filed a suit for declaration that they have paid the entire sale consideration, therefore, they are exclusive owners of the property. They also pray for a decree of injunction restraining the

defendants from forcibly dispossessing them which was partly decreed on 10.01.2008, to the extent of injunction only, whereas, the relief of declaration was declined.

Children of Sh. Ronak transferred 12 kanals and 8 marlas of land in favour of the wives of the respective petitioners on 28.09.2012.

Children of Sh. Sher Singh while alleging willful violation of the decree dated 10.01.2008, filed an application under Order 21 Rule 32 CPC, in which the impugned order has been passed.

Sh. Rakesh Gupta, the learned counsel representing the petitioners has informed the court that in the application for partition of the joint property, the instrument of partition has been prepared. According to which the legal heirs of Sh. Ronak are held entitled to  $\frac{1}{2}$  share i.e. 13 kanals in the joint land. It has further been pointed out that the share of the petitioners' wives has also been separated.

On the other hand, the learned counsel representing the decree holders claims that the aforesaid instrument of partition is subject matter of challenge before the revisional Court.

Be that as it may. Before ordering civil imprisonment for willful violation of a decree passed by the Court, it is incumbent that the Court comes to a firm conclusion that the Judgment Debtors have wilfully disobeyed the decree despite granting sufficient opportunities. It is alleged by the decree holders that the children of Sh. Ronak, while executing the sale deed, have recited delivery of possession of the property to their vendees.

In view of the subsequent development, the decree dated 10.01.2008, has lost its sheen. Once the property has been partitioned, the

erstwhile co-sharers are entitled to possession of the land allotted to them.

Keeping in view the aforesaid facts, the impugned order sentencing the civil imprisonment of the petitioners is declared as void and in-operative.

With these observations, the revision petition is disposed of .

Needless to observe that the parties shall be at liberty to contest the partition proceedings, if so advised.

All the pending miscellaneous applications, if any, are also disposed of.

**July 19, 2022**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

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

**Whether reportable : Yes/No**