

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

CR-1351-2022 (O&M)

Date of decision: 18.04.2022

Gurnek Singh

....Petitioner

Versus

Surjit Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Sarika Gupta, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

While assailing the correctness of the order passed by the Executing Court on 27.10.2021, while dismissing the execution petition filed under Order 21 Rule 32 Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), the petitioner has filed the present revision petition. The petitioner-plaintiff filed a suit for grant of decree of permanent injunction claiming that he is in possession and the defendants be restrained from interfering in his possession. The aforesaid suit was decreed on 31.10.2012. The defendants' first appeal was dismissed on 09.05.2014. The petitioner filed an execution petition under Order 21 Rule 32 CPC alleging encroachment upon his land after the judgment and decree dated 09.05.2014. He claims that he came to know of the encroachment on 10.05.2016. The Executing Court, after culling out the issues, permitted the parties to lead evidence. It has been found that the petitioner has failed to prove that the alleged encroachment is after the date of institution of the suit.

It may be noted here that the respondents have claimed that

the decree has been obtained by way of fraud. A demarcation report of the year 2006 has been produced to prima facie establish that it is the defendants who were in possession of the property before the date when the petitioner filed the suit and this fact was in his knowledge. Order 21 Rule 32 CPC enables the Executing Court to enforce a decree for specific performance of restitution of conjugal rights or for an injunction. If the judgment debtor fails to obey the decree he can be sent to civil prison or his property can be attached. However, before ordering imprisonment or attachment of the property, the court is required to be satisfied that the judgment debtor has wilfully failed to obey the decree. While deciding injunction suit simpliciter, the court does not decide the question of title. The petitioner has failed to produce evidence to prove that he has in fact been dispossessed after the institution of the suit. Thus, the Executing Court has dismissed the execution petition.

Heard learned counsel representing the parties at length and with his able assistance perused the paper book. Learned counsel representing the petitioner contends that it is evident from the site plan produced alongwith plaint and another site plan produced with the execution petition that the respondents have carried out the encroachment after the judgment and decree was passed by the trial court.

In the considered view of the Court, the lay out plan prepared under the instructions of a party does not prove the date of the alleged encroachment. The Executing Court, before passing an order

under Order 21 Rule 32 CPC, is required to record a finding that the judgment debtor has wilfully disobeyed the decree and in the absence of the aforesaid material, the Executing Court is left with no choice but for to dismiss the execution petition.

The petitioner has alternative remedy of filing a suit for possession after establishing his title.

In view thereof, no ground to interfere is made out.

Hence, dismissed.

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

18.04.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE