

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

122

CR-2484-2022

Date of decision: 21.07.2022

Siriya (now deceased) through his LRs

.....Petitioner

Versus

Tulsi Puri (now deceased) through his LRs

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Munish Kumar Garg, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside of the order dated 23.05.2022 passed by learned Civil Judge (Sr. Divn.), Narwana in Execution Petition No.32 of 2019 in case titled as 'Tulsi Puri through his LRs Vs. Siriya through his LRs' whereby objections under Order 47 read with Section 151 of the CPC preferred by the petitioners were dismissed.

Learned counsel for the petitioner *inter alia* contends that the Court below while passing the impugned order dated 23.05.2022 whereby his objections under Order 47 read with Section 151 of the CPC were dismissed, committed manifest error. He further submits that the trial Court failed to appreciate that the respondents were shown to be joint owners of share to the extent of 14/442 (i.e. 0 kanal 6 marla were joint) in the jamabandi 2012-13. However, they had sought possession of land measuring 8 kanal 7 marla in the execution proceedings. He submits that the respondents could not seek possession of land beyond 0 kanal 6 marla as their ownership rights were limited to

the extent of their respective shares only. Thus, in the absence of other co-owners they had no right to take possession of land beyond their share. Learned counsel also argued that since there had been non-compliance of order 1 Rule 8 of the CPC by the trial Court the decree could not be executed.

I have heard learned counsel and perused the material on record.

It would be relevant to point out that the suit land is in the joint ownership of the respondents and other co-owners as per the entries recorded in the ownership column of the jamabandi for the year 2012-13. Not only this, admittedly no partition by metes and bounds has also been effected.

In the circumstances this Court is unable to concur with the submissions of the learned counsel that the respondent being a co-owner could not seek possession of land beyond his share. Hon'ble Supreme Court in *M/s India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla (D) by LRs : 2004(1) RCR (Civil) 686* and *Mohinder Prasad Jain Vs. Manohar Lal Jain : 2006(2) RCR (Civil) 36* has held that any one owner out of the co-owners can seek possession of the entire joint land. Such co-owner would do so on his own behalf, in his own right and as an agent of other co-owners. The consent of other co-owners would be assumed to have been taken unless it is shown to the contrary that co-owners were not agreeable and despite their disagreement, a suit had still been instituted.

Learned counsel has failed to bring to the notice of this Court any material from which it could be shown that other co-owners

were not agreeable to take possession. Moreover, the scope of interference in execution proceedings is very limited as the Court cannot go behind the decree. The execution proceedings cannot be allowed to become another round of litigation.

Dismissed.

21.07.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No