

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

CR-6100-2019 (O&M)

Date of decision: 27.07.2022

Smt. Lali Devi and another

....Petitioners

Versus

Zile Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the petitioners

ANIL KSHETARPAL, J (Oral)

The petitioners' suit for grant of decree of permanent injunction as well as mandatory injunction was dismissed by the trial court on 25.05.2016. In para 13 the court noticed that the defendants are already in possession of certain part of the suit property. In the appeal filed, the court granted limited relief to the petitioners vide judgment and decree dated 10.04.2017, operative part whereof reads as under:-

“21. Hence, as a sequel to my above findings, present appeal is accepted partly with costs whereby defendant is permanently restrained from making any further encroachment upon the passage in dispute. Decree-sheet be prepared accordingly. Counsel fees is assssed Rs.3300/-. Copy of this judgment along with trial court record be sent back to the learned trial court. File of this appeal be consigned to record room after due compliance.”

An application filed by the petitioner under Order 21 Rule 32 of the Code of Civil Procedure, 1908 has been dismissed by the court on the ground that the appellate court did not grant any relief of mandatory injunction and the executing court cannot go behind the decree.

The petitioners assail its correctness. Before passing any order under Order 21 Rule 32 of the Code of Civil Procedure, 1908, the court is required to record a finding that the judgment debtor despite the opportunity has wilfully failed to obey the decree. The consequences that ensue from Order 21 Rule 32 includes his detention in the civil imprisonment or by attachment of his property. Such serious consequences require decree holder to prove his case beyond the reasonable doubt. In the present case, despite an opportunity given, the petitioners have failed to draw the attention of the Court to such material which will enable the court to record such finding. Hence, no ground to interfere is made out.

Dismissed.

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

27.07.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE