

CR 5668/2022

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

**CR NO.5692/2022 and
CR 5668/2022**

Date of decision:5.12.2022

(1) CR NO.5692/2022

Janu Khan (since deceased) through LRs

.....Petitioner

Vs.

Shamsher (since deceased) through LRs and another

.....Respondents

(2) CR 5668/2022

Lilu Ram and others

.....Petitioners

Vs.

Shamsher (Since deceased) through his LRs and another

.....Respondents.

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munish Kumar Garg, Advocate for the petitioners.

Nidhi Gupta,J.

This common order shall dispose of aforesaid two revision petitions, as learned counsel for the petitioners agree that both petitions are identical in terms of facts and law.

For the sake of convenience facts are being noticed from CR 5692/2022.

By way of this revision petition, the petitioner is seeking setting aside of the order dated 14.11.2022 passed by Id. Civil Judge (Sr. Division)

CR 5668/2022

Narwana whereby the learned trial court has dismissed the objections filed by the petitioner under Order 47 read with Section 151 CPC in Execution Petition NO.31 of 2019 and Execution Petition No.30 of 2019.

Brief facts of the case are that petitioners/plaintiffs/ JDs filed a Civil Suit No. 192/2011 of 26.8.2011 for declaration and permanent injunction against the Gram Panchayat, Bidhrana, to the effect that petitioners/JDs are owners-in-possession of the agriculture land measuring 61K17M situated in Village Bidhrana, Tehsil Narwana (hereinafter referred to as the 'suit property'). The respondents/defendants/DHs, sought impleadment in said Suit in their own right as also for being representatives of residents of Puri and Giri of V. Bidhrana which was allowed; and the respondents then filed counterclaim. Vide order dated 25.2.2014 the petitioners withdrew their suit; and the counter claim of the respondents was dismissed by the learned trial Court vide judgment and decree dated 11.12.2014. In appeal, the learned lower appellate Court/ ADJ Jind allowed the respondents' counter claim vide judgment and decree dated 3.4.2019 (Annexure P-2). Accordingly, the respondents/DHs preferred execution petition in terms of the order 21 Rule 11 CPC before the Executing Court, Narwana, seeking execution of the judgment and decree dated 11.12.2014.

Petitioners/JDs preferred objections in terms of Order 47 read with Section 151 CPC on various grounds including that as per jamabandi for the year 2012-13 the respondents have been shown as joint owner of 11/442 share only i.e. only land measuring 2K6M but the respondents have sought possession of the entire land measuring 61K17M. In the execution proceedings objection was also taken that the respondents had not complied with the mandatory provisions of Order 1 Rule 8 CPC. Vide order dated

CR 5668/2022

14.11.2022 the learned Executing Court has dismissed the objections of the petitioners/JDs. It is this order which is under challenge before this Court.

Learned counsel for the petitioners submits that the impugned order is unsustainable as the courts below have not complied with the mandatory provisions of Order 1 Rule 8 CPC. It is further submitted that the respondents are seeking possession of land which is in excess of their share.

I have heard learned counsel for the petitioners. It is not in dispute that the ground sought to be raised yet again by the petitioner at this stage regarding Order 1 Rule 8 CPC has already been raised before the Courts below and has been rejected. Learned counsel for the petitioners is unable to controvert that it was the petitioners themselves who had failed to file the application under Order 1 Rule 8CPC; and as the suit of the petitioners has been dismissed, question of compliance of Order 1 Rule 8 CPC does not now survive. I find no error in the reasoning of the learned Executing Court that it cannot go behind the decree. Further it is also established position in law that co-sharer can seek possession of the entire decreed land on behalf of all the co-sharers. Learned counsel is unable to dispute the above position in law and fact. Accordingly, finding no merit in this revision petition the same is hereby dismissed.

A copy of this order be placed on the file of CR No.5668/2022.

05.12.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No