

2023:PHHC:162141

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

**CR-1316-2015 (O&M)**  
Date of decision: 18.12.2023

Major Singh

...Petitioner

Versus

Sudagar Singh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. G.L.Bajaj, Advocate for the petitioner

Mr. Navjot Singh Wahniwal, Advocate for  
respondent no.1

**ANIL KSHETARPAL, J (Oral)**

1. The correctness of the order passed by the Executing Court on 15.01.2015, while directing the confinement of the petitioner to civil imprisonment, for a period of three months, for wilful violation of the judgment and decree passed on 06.10.2003, is assailed.

2. On 29.11.2023, the following order was passed by this Court:-

*“Learned counsel representing the petitioner (judgment debtor) submits that the petitioner has already suffered incarceration for a period of one month and tens days out of the total civil imprisonment of three months. He submits that a decree for injunction was passed on 06.10.2003, directing the petitioner to remove the encroachments from a common passage. He submits that in proceedings for partition of the property, the joint land has already been divided*

*by metes and bounds, providing the independent passages.*

*On a Court question, the learned counsel representing the petitioner has failed to refer to the final order of partition. He prays for a short accommodation.*

*List on 01.12.2023, in the urgent list.*

*No further request for an adjournment shall be entertained.”*

3. The learned counsel representing the petitioner contends that the petitioner is 80 years old and is unable to produce copy of ‘Sanad Taksheem’ partitioning the property by metes and bounds. He further submits that the petitioner as well as the respondent have already sold their respective shares of the property.

4. On the other hand, the learned counsel representing the respondent (decree-holder) contends that there is a wilful violation of the decree and this Court should not interfere with the order.

5. This Court has considered the submissions made by the learned counsel representing the parties. A period of more than 8 years has elapsed from the date the impugned order was passed. The petitioner has already suffered incarceration for a period of one month and 10 days. Although the petitioner has failed to produce a copy of the order of the partition, however, the said order assumes significance, particularly when both the parties are alleged to have sold their respective share in the joint property. Hence, it is appropriate to grant one more opportunity to the petitioner to

produce the order partitioning the property by metes and bounds, if any.

6. Keeping in view the aforesaid facts, the impugned order is set aside and the Executing Court is directed to pass a fresh order, after considering all the aspects of the matter, including the age of the petitioner, his physical condition as well as the subsequent developments, if any. The parties through their learned counsel are directed to appear before the Executing Court on 12.01.2024.

7. Disposed of, accordingly.

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

18.12.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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