

2023:PHHC:154439
**149 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4307-2023 (O&M)
Date of decision: 04.12.2023

Parmanand

...Petitioner

Versus

Des Raj

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Prabhjot Kaur Virk, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by the courts below, while dismissing the petitioner's application under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') is assailed by the plaintiff. He filed a suit for the partition of the joint property. He claims ownership of 11 marlas land in the joint khewat of land measuring 5 kanals 1 marlas (101 marlas). The parties were directed to maintain the status quo during the pendency of the suit. The petitioner claims that the aforesaid order of status quo has been violated as the respondents have carried out further construction. Ultimately, the suit filed by the plaintiff was dismissed by the trial court on 08.09.2015. Both the courts have found that the plaintiff has failed to prove that the respondent has wilfully violated the temporary injunction order.

2. Learned counsel representing the petitioner contends that the judgment and decree passed by the trial court on 08.09.2015 in the main suit has been reversed by the First Appellate Court on 22.11.2023. She has produced a print out of the aforesaid judgment.

3. A perusal of the judgment passed by the First Appellate Court shows that a preliminary decree for partition of the joint property has been passed. The petitioner has been held entitled to 11 marlas land out of the joint land of 101 marlas.

4. Learned counsel representing the petitioner further submits that in view of the judgment passed by the First Appellate Court, the impugned orders are required to be set aside

5. This Court has considered the submissions made by the learned counsel representing the petitioner. In the proceedings under Order XXXIX Rule 2-A CPC, the Court tries to implement the injunction order and if the other party is proved to have wilfully violated the same, the court can pass an order detaining the violator in civil imprisonment. However, the petitioner is required to prove that there is a wilful violation of the injunction order. In this case, both the courts, on appreciation of evidence, have come to a conclusion that the petitioner has failed to prove the wilful violation of the injunction order.

6. Learned counsel representing the petitioner has failed to draw the attention of the Court to any substantive error or perversity in the impugned orders.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Hence, dismissed.

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

04.12.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No