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

**CM-4976 & 4980-CII-2023 in/and  
CR-8346-2019 (O&M)  
Date of Decision: 20.03.2023**

Baba Pooran Shah

....Petitioner

Versus

Kuljit Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. Sharad Mehra, Advocate  
for petitioner.

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**ARUN MONGA, J. (ORAL)**

**CM-4976 & 4980-CII-2023**

For the reasons stated in applications, same are allowed subject to all just exceptions. Order dated 17.02.2023 (Annexure P-5) is recalled and the main case is restored to its original number and same is taken up on Board for hearing today itself.

**Main Case**

Petition herein is for setting aside order dated 06.02.2019 (Annexure P-1) passed by Ld. Civil Judge (Junior Division), Amritsar, whereby application under order XXI Rule 32 CPC for implementation of judgment and decree dated 09.11.2011 (Annexure P-2), was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Petitioner/plaintiff filed a suit for permanent injunction against respondent/defendants No.1 to 6 restraining them from interfering into the peaceful possession of petitioner over the 'Samadh Baba Fateh Shah' measuring 1 Kanal 10 Marlas out of Khasra No.72/14, Village Chabba, Tehsil and District Amritsar. Said suit was decreed vide judgment and decree dated 09.11.2011 (Annexure P-2). After passing of the said judgment and decree (Annexure P-2), respondents No.1 to 6 came to disputed property and interfered into the possession of petitioner. As such, petitioner was constrained to file application under Order XXXIX Rule 2-A CPC for initiating contempt proceedings against respondents. Said application was disposed of by Ld. Trial Court on 05.09.2016 vide order (Annexure P-3) holding the same to be non-maintainable and further that once a suit had been finally decreed then appropriate remedy for applicant was to file an application under Order XXI Rule 32 CPC and not under Order XXXIX Rule 2-A CPC.

2.2. In compliance of order dated 05.09.2016 (Annexure P-3), petitioner filed an application under Order XXI Rule 32 CPC for implementation of judgment and decree dated 09.11.2011 (Annexure P-2). In both the applications i.e., application under Order XXXIX Rule 2-A CPC as well as in application under Order XXI Rule 32 CPC, he specifically pleaded that respondent/defendants No.1 to 6 along with respondents No.7 to 19 came to the disputed property in the last week of May-2013 and forcibly entered into the area of Samadh and thus, interfered into the peaceful possession of petitioner and as such, they violated judgment and decree dated 09.11.2011 (Annexure P-2).

2.3. Application under Order XXI Rule 32 CPC filed by petitioner has been dismissed by Ld. Trial Court/Executing Court vide impugned order while holding that initially the suit was filed against 6 defendants only. Therefore, the

present application filed against 19 respondents is not maintainable since decree of injunction is not judgment in rem and is binding on the parties only.

3. Service was effected upon respondents but they had chosen not to cause their appearance and even some of the respondents had refused to accept summons. However, given the nature of order being passed, there is no necessity to issue fresh notice to respondents, as no legal prejudice would be caused to them. Notice to respondents is thus dispensed with.

4. In view of the aforesaid peculiar averments made in the application *qua* judgment debtors, who were defendants No.1 to 6 in the main suit and also as duly noticed by Ld. Executing Court, I am of the view that to the extent these judgment debtors were made respondents in the application seeking enforcement of judgment and decree dated 09.11.2011 (Annexure P-2), Ld. Trial Court/Executing Court ought not to have dismissed the application *qua* them. It appears that while observing that those who were not party to the suit and were not judgment debtors cannot be made party in the application, the same has been dismissed in entirety instead of deleting the name of non-judgment debtors from the array of parties.

5. On a Court query, learned counsel for petitioner, under instructions, states that petitioner will not press his application before the Ld. Executing Court for enforcement of judgment and decree (Annexure P-2) against respondents No.7 to 19 and therefore, their names, be deleted from the array of parties.

6. In the aforesaid premise, the order impugned herein is modified to the extent that application filed by petitioner seeking execution of decree is dismissed only against respondents No.7 to 19 and their names be deleted from the array of parties and the petitioner's application is restored to its original number with

direction to the Ld. Executing Court to proceed further in accordance with procedure.

7.           Petition stands disposed of, accordingly.
8.           Pending civil miscellaneous application(s), if any, shall also stand disposed of.

( ARUN MONGA )  
JUDGE

March 20, 2023  
*ashish*

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