

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

135

2024:PHHC:002544

CR-592-2023

Date of decision: 10.01.2024

JANAK RAJ (DECEASED) THROUGH LRS

..Petitioner

Versus

RANI DEVI AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Ms. Rashika Bansal, Advocate
for respondent No.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. In this revision petition, the petitioner through his legal representatives assails the correctness of two different orders passed by the Executing Court. Originally, the property belongs to Sh. Prakash Chand. He died leaving behind widow and two daughters. Thus, all the three class-I heirs became owners of 1/3rd share each. One daughter filed a suit for the partition of the property against her mother, in which the preliminary decree for partition was passed on 31.10.2005, whereas, the final decree for partition of the property was passed on 09.01.2018. The aforesaid decree has become final. The petitioner herein Sh. Janak Raj claims to be a son of Smt. Kaushalya Devi and also claims that Sh. Prakash Chand is not his father. He filed the objection petition as well as an application for stay of the execution proceedings. He has also filed a separate suit challenging the decree passed in a partition suit. The Executing Court has dismissed the objection petition and refused to stay the execution of decree. Challenging its correctness, this revision petition has been filed.

2. The learned counsel representing the petitioner submits that in terms of Order XXI Rule 29 of the Code of Civil Procedure, 1908, the

execution proceeding should be kept in abeyance in order to await decision in the separate civil suit.

3. This Court has considered the submissions of the learned counsel representing the parties.

4. It is evident that Order XXI Rule 29 of the Code of Civil Procedure, 1908, uses the expression 'may'. In the peculiar facts of the case, the Executing Court has enabling powers to stay the execution petition. However, it shall not be appropriate to exercise powers under Order XXI Rule 29 of the Code of Civil Procedure, 1908, in all the cases and such power shall be used sparingly. It is evident that nearly six years have elapsed since the final decree for partition was passed.

5. Admittedly, the petitioner has not been granted any interim protection in the separate suit filed by him.

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

7. Dismissed accordingly.

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

January 10th, 2024

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*