



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

ESA No.55 of 2017 (O&M)

Date of Order:25.11.2024

Gurbax Singh**Appellant****Versus****Sohan Singh and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Ashok Bhardwaj, Advocate, for the appellant.****ANIL KSHETARPAL, JUDGE (Oral)**

1. This execution second appeal has been filed against the concurrent order passed by the Executing Court which in first appeal has been affirmed by the first appellate court.

2. By virtue of ex-parte decree dated 18.09.2013, the respondents were restrained from interfering in the appellant's possession with respect to 1/4th share of plot measuring 4 marlas comprised in Khewat No.809/728, khasra no.195//7/2. It is evident that the appellant was co-sharer along with Smt. Harnam Kaur widow of Sh. Dhanna Singh, Sh. Ajaib Singh and Smt. Jangiro daughter of Sh. Dhanna Singh, who were having 1/4th share each. After passage of one year from the date of decree, the appellant filed an application under Order 21 Rule 32 CPC complaining wilful violation of the decree which was disputed by the respondents.

3. Upon appreciation of the evidence, both the courts have found that the appellant has failed to mention even the date, time or place when the Judgment Debtors demolished the wall of his house. It has further been found that the injunction was granted to the appellant only with respect to one marla plot, whereas in the site plan annexed with the application,



the appellant claims 6 to 7 marlas of land which was not part of the decree.

4. This Bench has heard the learned counsel representing the appellant at length and with their able assistance perused the paper book.

5. The learned counsel representing the appellant while referring to paragraph 2 of the objection submitted by the Judgment Debtors submits that the stand taken by the objector in the objection petition is not in conformity with the stand taken in the evidence. He submits that, therefore, there is perversity in the impugned orders.

6. Under Order 21 Rule 32 CPC, the court has power to ensure the implementation of an injunction decree passed by the court if there is a wilful violation of the decree by the Judgment Debtors. To prove that fact, the decree holder is required to allege the date, time, or year when intentional infringement of the decree is alleged. In this case, the appellant has failed to allege the same which is *sine-qua-non* for initiating proceedings under Order 21 Rule 32 CPC.

7. In any case, it is evident that the appellant is owner to the extent of 1/4th share in plot measuring 4 marlas. In such situation, the appellant, if so advised, may file a suit to establish his entitlement.

8. With these observations, the execution second appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

November 25, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No