



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

(i) CR-2712-2020 (O&M)

Gian Chand

...Petitioner

VERSUS

Bishambar and others

...Respondents

(ii) CR-2722-2020 (O&M)

Gian Chand

...Petitioner

VERSUS

Bishambar and others

...Respondents

Date of Decision: May 05, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.G.C.Shahpuri, Advocate
for the petitioner.

Mr.R.D.Gupta, Mr.Raghuvinder Singh and
Mr.Viresh Dahiya, Advocates
for the respondents.

ARCHANA PURI, J.

These are two revision petitions filed by the petitioner to assail the order dated 23.11.2020 passed by learned Executing Court, whereby, an application for seeking police help was dismissed and issues were framed, vis-a-vis, objections filed by the respondents.



The essential facts, to be noticed, are as follows:-

That, the petitioner (plaintiff before learned trial Court) had filed a civil suit No.298 of 1996, thereby, seeking issuance of permanent injunction to restrain the defendants (i.e. Beni Prashad and Bishambar), in any manner, whatsoever, in the peaceful cultivating possession of the petitioner-plaintiff over the land measuring 22 Kanal 8 Marla, bearing Khewat/Khatauni No.175 Min/380, Khasra No.25//9/2, 12/2 and Khewat/Khatauni No.183, Min/402 bearing Khasra No.76//14, situated in the revenue estate of village Khadri, Tehsil Chhachhrauli, District Yamunanagar. In the said suit, the petitioner-plaintiff asserted himself to be in occupation of the property in question as tenant for the last 15 years and that he had been paying batai regularly to the defendants. The defendants without having any interest, are threatening to dispossess him from the suit property, forcibly and illegally.

On appraisal of the evidence on record, the said suit was decreed vide judgment and decree dated 14.01.2005, copy whereof is Annexure P-1. However, the appeal bearing No.13 of 2005 was filed by Beni Prashad and Bishambar and the appellate Court, on the basis of the evidence, concluded about Gian Chand (plaintiff) to be in possession of the land, comprised of Rect. No.25 Killas No.9/2 and 12/2, as a tenant and that he is in possession of the suit land comprised of Rect. No.76 Killa No.14, as a son of one of the co-sharers. Considering his possession to be lawful possession, he was held to be entitled to protect his possession against forcible dispossession by the defendants and with this modification, the appeal was dismissed, vide judgment dated 05.02.2007, copy whereof is Annexure P-2.

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Thereupon, in August 2020, Gian Chand filed a petition under Order 21 Rule 32 read with Section 151 CPC, for seeking enforcement of the judgment and decree dated 14.01.2005, by way of attachment of the property of the JD and the detention of the JD in civil prison. During the pendency of the said petition, an application was filed for police help for enforcement of the judgment and decree dated 14.01.2005. It was claimed in the application that the petitioner had sown/planted sugarcane in Khasra No.25//9/2, measuring 7 Kanal 4 Marla and in Khasra No.12/2, measuring 7 Kanal 4 Marla, after cutting of the wheat crop in the month of April 2020 and some popular trees are also planted. He had also sown the crop of jeeri in Khasra No.76//14 measuring 8 Kanal, which was sown in the month of June 2020.

Further, it was claimed that on 26.07.2020, when the petitioner-plaintiff along with his sons, had gone to the suit land for spray of fertilizers, thereupon, the respondents had made an attempt to dispossess them and forcibly takeover the possession of the suit land and they had also extended threats to interfere in his peaceful possession. Also, it was claimed that the petitioner had filed an application before the police authorities on 27.07.2020, but no action was initiated against the respondents and the respondents have been threatening, again and again, the decree holder for dire consequences. On this account, police help was prayed to be given to the petitioner/decreed holder to enforce the judgment and decree dated 14.01.2005.

Reply to the same was filed, wherein, the respondents had asserted that the private arrangement was made by the predecessor of the

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parties and since then, all the co-sharers including the answering respondents, are in cultivating possession of the land of their share. The decree holder had filed the execution petition, just to put pressure upon the answering respondents. It was asserted that they never tried to dispossess the decree holder, as per private arrangement. As such, a prayer was made for dismissal of the application.

Even, during the pendency of the execution, objections were filed, at the instance of the respondents/JD, therein, asserting that the judgment and decree dated 14.01.2005 was passed against respondent No.2 and deceased Beni Prashad, but however, the execution has been filed by Gian Chand, illegally against respondents No.2 to 4, for the implementation of the aforesaid judgment and decree. They were never party to the said litigation and therefore, the execution is not maintainable. Furthermore, it was asserted that the judgment was passed in the year 2005, but the execution petition has been filed beyond the period of limitation.

Also, it was asserted that the land in question is owned and possessed by the defendants as co-sharers and the land is still joint, which has never been partitioned. The JDs as well as other co-sharers have made their own arrangement and they have been cultivating the land, as per their respective share. Even, after the decision of the civil suit in question and the dismissal of the appeal, Rulia Ram and Ratia Ram, predecessors-in-interest of the petitioner and the respondents, had mutually been cultivating the land, as per their shares of land, recorded jointly in their possession at different places. They have also installed tubewell bores, in the land, which came to their share.



Further, it was asserted that the objectors (respondents) never threatened the decree holder, at any point of time. False and frivolous averments have been made by the petitioner.

However, reply was filed. In fact, it was asserted that the execution is maintainable as respondents No.2 to 4 are sons and wife of Bishambar JD and all the respondents, in collusion with each other, with dishonest and malafide intention, have been threatening the decree holder and therefore, considering the role assigned, they were made party to the execution petition. In fact, it is submitted that there is no limitation with regard to the injunction judgment. The decree holder is in peaceful cultivating possession as tenant over the suit property.

After hearing counsel for the parties, vide order dated 23.11.2020, the application for providing police help was dismissed, whereas, the objections were considered and on the basis of the objections, so raised, the Executing Court, had framed following issues:-

1. *Whether respondents/JDs have violated the judgment and decree dated 14.01.2005 passed in Civil Suit titled as Gian Chand vs. Beni Prashad & Anr.? OPA*
2. *Whether present execution petition is maintainable against JDs No.2 to 4 or not? OPR*
3. *Whether present execution petition is not maintainable because same is time barred? OPR*
4. *Relief.*

Being aggrieved, the petitioner has filed the revision petitions, in hand.

Learned counsel for the parties heard.



Undisputedly, the Civil Suit No.298 of 1996 was decreed in favour of the petitioner on 14.01.2005. An appeal was filed. With some modification, with regard to the petitioner being in possession in one khasra number, as son of the co-sharer, the appeal, as such, was also dismissed. It was only in August 2020, a petition was filed under Order 21 Rule 32 CPC, thereby, seeking enforcement of the aforesaid judgment and decree. During the pendency of the execution petition, an application for police help was filed and even the objections were filed, which were dealt with, vide impugned orders.

Order 21 Rule 32 CPC, reads as herein given:-

“(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.”

No doubt, as submitted by learned counsel for the petitioner that the Court can pass any order, with regard to the grant of police help for the enforcement of the decree passed by the Court, but one step prior, it has to be established that there was willful disobedience, on the part of the respondents/JDs. Throughout the arguments, much emphasis has been laid upon ***Ram Singh and another vs. Shiv Narain, 2006(3) RCR (Civil) 432***, on the basis whereof, it is submitted that under Order 21 Rule 32 CPC, the decree may be enforced by detention of the person against whom, the decree



has been passed, by his detention in civil prison or by attachment of his property or by both.

Very true, the Court can do so, but however, relating to the same, the Executing Court has appropriately made an observation that the authority, so cited by learned counsel for the petitioner-plaintiff, is not applicable, at this stage, because it would be seen at a later stage, when it is proved that the respondents are disobeying the same. As observed aforesaid, one step prior to considering the question of extending of police help for the compliance of the judgment and decree, it has to be established that there was willful disobedience. Only thereupon, any such order of police help could be made. In *Ram Singh's case (supra)*, it was evident that the evidence was led before the Executing Court and on appraisal of the evidence, it was further so observed about the decree to be enforced by detention in civil prison or attachment of the property or by both, of the JDs.

However, such is not the position in the present case. It is still at initial stage. No evidence, as such, has come on record and therefore, solely on account of the assertions made in the application for police help, it cannot be concluded about there to be willful disobedience. The Court cannot pass an order, extending of the police help, on the basis of the assumptions and presumptions, at the behest of the petitioner, more particularly, when the application has been filed after a period of 15 years. What intervened during 15 years, after passing of the judgment and decree in question, that has to be taken care of, more particularly, when it is coming forth in the observations made by the Appellate Court that petitioner is in possession in one of the khasra numbers, as son of the co-sharer. There are other co-sharers also



besides the petitioner or his father and they are also bound to be in possession of the land.

Even the other case law, relied upon by learned counsel for the petitioner, as cited in the impugned order, has been fairly distinguished by the Executing Court.

Very true, the Executing Court is also required to see as to what is the purpose behind seeking of the police help, more particularly, police help, as such, cannot be provided, when one remedy by way of filing of a petition under Order 21 Rule 32 CPC, for seeking enforcement of the decree in question, has already been availed by the petitioner. Moreover, it is pertinent to mention that the said threat, at the behest of the respondents, as asserted, related to the crop as existing on the suit land in July 2020.

In the given circumstances, the prayer for grant of police help, as such also, by efflux of time has become infructuous. However, in view of the aforesaid findings, it is made clear that the prayer for police help, as such, cannot be shut out, for all times to come for the petitioner to assert his rights. The same can be considered appropriately, in the fitness of circumstances, as pleaded subsequently.

Furthermore, with regard to the objections raised, at the behest of the respondents, it is pertinent to mention that for the purpose of passing any order for the attachment of the property or detention in civil prison of the JDs, it is, at first instance, required to establish there to be willful disobedience of the judgment and decree passed in favour of the petitioner in the year 2005. From the material coming on record, it is evident that the petitioner is also one of the co-sharer qua one khasra number, as observed by



the Appellate Court, in the judgment dated 05.02.2007, copy whereof is Annexure P-2. Considering the same, it is evident that there are other co-sharers also. Though, the period of 15 years, as such, has lapsed, after obtaining of the decree and filing of the application, but however, what was the scenario as existing between the co-owners, qua the joint land, has to be appraised by the Executing Court.

Given the same, it is further pertinent to mention that respondents assert about there to be same arrangement between the parties. Though, it is denied at the behest of the petitioner, but the fact remains that the parties to the lis are co-sharers qua the suit land to some extent. The respondents also ought to be in possession of some part of the land. Though, it is also asserted that the respondents had filed an application for seeking partition of the joint land and the same was withdrawn and copy of the statement got recorded about withdrawal of the partition petition, has also been placed on record, but however, these documents, as such, cannot be appraised *ipso facto*. Some opportunity has to be given to the respondents also, to explain their position and about the private arrangement, as made.

Throughout, much emphasis has been laid that issues ought not to be framed. Very true, time and again Courts have reiterated the principle that not in all the cases, the Executing Court is required to frame the issues and provide an opportunity to lead evidence to prove the objections, but however, in the case in hand, considering the aforesaid circumstances, when the parties are also co-sharers, there ought to be arrangement reached between the parties, with regard to their possession and on the basis thereof and it has to be further seen, whether there is violation of the judgment and

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decree dated 14.01.2005 passed in Civil Suit No.298 of 1996 and relating to the same, to provide an opportunity, learned Executing Court had appropriately framed the issues. Though, the question, with regard to the maintainability as well as the question with regard to claim being time barred, could be decided by the Executing Court without framing of issues, but however, since the question of violation of decree requires an opportunity of hearing to be given to the parties concerned, therefore, learned Executing Court has appropriately framed the issues.

In the light of the aforesaid observations, the impugned orders dated 23.11.2020 passed, vis-a-vis, dismissal of application for police help and framing of the issues, vis-a-vis, the objections, so raised, as such, do not warrant interference.

Hence, the revision petitions sans merit and are hereby dismissed.

May 05, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No