

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8757 of 2017 (O&M)
Date of decision: 18.10.2022

Prem

..Petitioner

Versus

Narata Ram and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Momi, Advocate,
for the petitioner.

Mr. Sant Kashyap, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

In proceedings, under Order XXI Rule 32 CPC, the property of the petitioner has been ordered to be attached. The respondent no.1 claims that in Civil Suit no.180 of 2010, a decree for grant of permanent injunction was passed in his favour restraining the defendants from interfering in his possession. The aforesaid decree for injunction was upheld in the first appeal as well as in the second appeal. Complaining its willful violation, an application under Order XXI Rule 32 CPC was filed alleging that the respondents have harvested eucalyptus trees and are not permitting respondent no.1 to carry out constructions in the said property. Admittedly, respondent no.1 (decree holder) is a co-sharer in a joint khata of land. His share is only to the extent of 2 kanals. Admittedly, respondent no.1 is in possession of two kanals of land as per his entitlement.

The Executing Court has passed the order attaching the property

on the ground that the petitioner is guilty of willful violation. However, there is no finding that such steps, as alleged, were taken by the petitioner which may constitute wilful disobedience of the decree of injunction passed in the year 2010. Admittedly, the partition proceedings were initiated by respondent no.2 as he is owner to the extent of the major share in the joint property, which is stated to be pending.

The learned counsels representing respondent no.1 submits that the aforesaid partition proceedings have been withdrawn by the respondent no.2 on 13.05.2014.

After having heard the learned counsels representing the parties at sufficient length, this court is of the view that the permanent solution of the problem lies in partition of the property . Every co-owner is presumed to be in possession of every portion of the joint land. In such circumstances, particularly when respondent no.1 continues to be in possession as per his entitlement, proceedings under Order XXI Rule 32 CPC are not considered appropriate. The learned counsel representing the petitioner as well as respondent no.2 submit that they have no objection if the partition proceedings are revived.

Keeping in view the aforesaid facts, the Assistant Collector IIInd Grade, Shahbad Markanda, is requested to revive the partition proceedings and proceed with the same in accordance with law. It is also expected that the parties will cooperate and the partition proceedings shall be concluded, preferably, within a period of one year, from today.

With these observations, the revision petition is disposed of.

It is declared that the impugned order shall not continue to operate against the petitioner.

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

October 18, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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