

**(2011) 07 P&H CK 0158**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 4109 of 2011 (O and M)

Daya Ram and Another

APPELLANT

Vs

Kanwar Pal and Others

RESPONDENT

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**Date of Decision:** July 8, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 35(1), Order 21 Rule 35(2)

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

Surji Devi filed a suit for declaration and in the alternative for declaration with consequential relief of possession (Annexure P-1). It was specifically stated by her in the suit as under:

11. That the Plaintiff continues to be in possession of the suit property. She never handed over possession of the said lands to the Defendants at all. Since about June 1986, they were doing the husbandry work in the land in suit under the directions of the Plaintiff as her seeris etc. The actual physical possession of the land remained with the Plaintiff and Defendants were entitled to only seer or servant's charges in the shape of two third of the produce. The land for all intents and purpose is in possession (actual physical possession) of the Plaintiff. However, if the Hon'ble Court comes to the conclusion that the possession had actually been passed on to the Defendants (which is vehemently denied), the Plaintiff is entitled to possession of the land in suit from the Defendants.

2. The above said suit was decreed. In execution, the Petitioner had filed objections on the ground that the property is joint and therefore, under Order 21 Rule 35(2) CPC actual physical possession cannot be obtained until the proceedings for partition are initiated. The Executing Court after examining the entire issue held that

Surji Devi had filed a suit seeking nullification of the decree dated 15th January, 1986. It was held that after the suit was decreed, Surji Devi had regained the possession which she was exercising over the property prior to passing of the decree dated 15th January, 1986. After examining the entire issue, the Executing Court held that in the facts and circumstances of this case provisions of Order 21 Rule 35(1) CPC shall apply and it rejected the argument of judgment debtors with regard to the application of provisions of Order 21 Rule 35(2) CPC.

3. The Executing Court has rightly held that it cannot go behind the decree and the execution has to be carried out in letter and spirit keeping in mind the intent of the Court. Furthermore, the plea raised before this Court cannot stand judicial scrutiny in view of the specific averments made in the plaint (Annexure P-1) which has been reproduced above.

4. Hence, there is no merit in this revision petition and the same is hereby dismissed.