**(2013) 08 P&H CK 0899**

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

**Case No:** Civil Revision No. 7193 of 2011 (O and M)

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| Pritam Kaur and Others | APPELLANT |
| Vs | |
| Maya Devi and Others | RESPONDENT |

**Date of Decision:** Aug. 22, 2013

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 98

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Advocate:** Ashish Aggarwal, for the Appellant; Saurabh Bajaj, for the Respondent

**Final Decision:** Dismissed

**Judgement**

K. Kannan, J.

The revision is against the order rejecting an objection caused by the legal representatives of the first defendant-respondent/judgment-debtor. Through the decree, the plaintiff obtained a right of preemption as a tenant in possession of the property. The trial Court and the appellate Court had granted only half right to the plaintiff considering the fact that he was one of the sons of the original tenant Telu Ram and rejecting his contention that he was in possession of other half relating to the share of another son of Telu Ram who was in army. The High Court decreed the suit in full in R.S.A. No. 32 of 1991-Smt. Maya Devi and others Versus Rattan Singh and another, dated 23.02.2010 and accepted the plea that even a tenant inheriting part of the estate will be entitled to obtain a right of preemption in respect of the whole estate. The plaintiff having succeeded in the appeal sought for delivery of possession of half of the share which, according to him, had been lost during the course of the proceedings by the dismissal of the suit and the appeal of first instance in respect of half share. The obstruction is now caused by the legal representatives of the deceased judgment-debtor contending that only symbolic possession must be taken and that there had been an exchange of the property during the pendency of the suit. Any transaction of exchange pending suit cannot bind a decree-holder and if the decree-holder has obtained a right to preemption and a right to

the whole of the property claiming that he is already in possession of the half share of what was decreed by the trial Court as well as the appellate Court and seeks for the possession of the remaining half share of his brother originally as a tenant and later as a person obtaining a right of preemption, he cannot be thwarted in his right by a specious plea that the remedy will lie only for taking symbolic possession and to work out his right later. There is no other right to be worked out except to secure whole of the property in his hands. The Court shall see that it executes the decree as passed by the High Court and fend off any obstruction caused at the instance of the judgment-debtor. Order 21 Rule 98 CPC empowers the Court to deliver possession and remove any obstruction caused by a judgment-debtor or by a person claiming at his instance or instigation through the transaction pendente lite and cause an arrest to be made for a period which may extend to 30 days, if obstruction persists.

2. The Executing Court shall deliver possession of the property in the manner sought for and ensure that the property is free from any obstruction from the petitioners and if the bailiff returns with any endorsement of obstruction, the Court shall exercise its power to order imprisonment who caused that obstruction. The revision petition is dismissed with the above observations.