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

**CR-8353-2018 (O&M)  
Date of Decision: 29.07.2025**

Gurmail Singh and others

.....Petitioners

Vs.

Balwant Kaur and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Jatinder Singla, Advocate,  
for the petitioners.

Mr. Ishan Gupta, Advocate,  
Ms. Muskan Gupta, Advocate and  
Ms. Deepali Jindal, Advocate,  
for the respondents.

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**SUDEEPTI SHARMA J. (ORAL)**

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 10.10.2018 passed by learned Additional Civil Judge (Senior Division), Sangrur, in CMA No.31 of 21.10.2015 titled as 'Balwant Kaur and another Vs. Gurmail Singh and others', whereby application under Order 21 Rule 32 of the Code of Civil Procedure, 1908 (for short, 'CPC') has been allowed.

2. Learned counsel for the petitioners contends that the application under Order 21 Rule 32 CPC filed by the respondents has wrongly been allowed vide impugned order dated 10.10.2018 by the learned Additional Civil Judge (Senior Division), Sangrur. He further contends that the learned



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trial Court has failed to appreciate the fact that levelling of the earth is not an offence. He relies upon the Punjab Minor Mineral Rules, 2013, to contend that levelling of earth is not an offence. He also relies upon judgments passed by the Co-ordinate Bench of this Court in **CR-4876-2014** tiled as **‘Jagbir Singh @ Jaswant Singh and others Vs. Pehlad and others’** on 04.07.2018, **Surinder Singh Vs. Balwant Singh (dead) through LRs and others, 2017(2) R.C.R. (Civil) 452** and **Raj Kumar Vs. Parshotam Dass, 2002(2) R.C.R. (Civil), 678**. Therefore, he prays that the present petition be allowed.

3. *Per contra*, learned counsel for the respondents submits that learned Additional Civil Judge (Senior Division), Sangrur, has rightly allowed the application under Order 21 Rule 32 CPC filed by the respondents, vide its order dated 10.10.2018.

4. I have heard learned counsel for the parties and perused the case file with their able assistance.

5. It would be apposite to reproduce relevant portion of the impugned order dated 10.10.2018 passed by learned Additional Civil Judge (Senior Division), Sangrur, which is reproduced as under:-

***“Issue No.1***

8. *The onus to prove this issue was upon the petitioners and in order to prove the same, applicant no.1 Balwant Kaur has herself stepped into the witness box as AW-1 to prove her affidavit Ex.AW-1/A which is reassertion of the facts pleaded in the application and are not repeated here for the sake of brevity. Further, in support of her contentions, her counsel has tendered into evidence certified copy of judgment and decree dated 06.02.2015 as Ex.P1 and Ex.P2. Further, learned counsel for the applicants has drawn attention of this Court towards cross-*



*examination of respondent no.3 Harpal Singh who has intentionally denied passing of injunction order against him in a suit filed by the applicants vide judgment and decree dated 06.02.2015. He has admitted the fact that their property is joint and has not been partitioned by any competent court till date but alleged that they are cultivating separate killa numbers. He has intentionally denied that the applicants had filed complaint against them for digging the earth from the joint khewat and selling the same for manufacturing of bricks. He has deposed that killa no.59//20 and 59//1 and 2 are adjoining to each other which is not factually incorrect as per the Aksh latha relied upon by the parties in civil suit.*

9. *In support of his contentions, learned counsel for the applicants has also drawn attention of this. Court towards cross-examination of RW-2 Inderjit Singh who has alleged that at the spot after lifting the earth from killa no.59//21, earth was filled in killa no.59//1 and ownership of property stated above is of Gruamil Singh who had called him at the spot but he was not summoned by any revenue official. He has clearly deposed that patwari did not demarcate the property but he snapped the photographs and in their village one trolley filled with earth is of the value of Rs.400/- only and as such, his evidence cannot be relied upon as his evidence is contradictory to the case of the respondents who have claimed that land of khasra no.59//20 is on higher level than killa no.59//1 and 2. Accordingly, learned counsel for the applicant has argued that the applicants have filed suit for permanent injunction against the respondents which was decreed on 06.02.2015 but in spite of that judgment, the respondents continued to dig the earth from the joint property and have sold the same for the manufacturing of the bricks regarding which the applicants have also moved complaint to the police officials but the respondents are intentionally denying the same. In fact the respondents have got the report from revenue officials in their favour as they were having relations with them. Lambardar Shalinder Singh and Bikramjit Singh Sarpanch were not present on the day of alleged visit of revenue official and the revenue patwari has made a wrong report at the instance of respondents. It is further argued that even as per the provision of Mines Act, the owner cannot dig the earth from his own land. It is further argued that the respondents have procured the false report regarding killa no.59//20 being 1-1/2 feet above the level of killa no.59//1 and 2. In fact these killas are not adjoining to each other and the respondents who have violated the judgment and decree of the Civil Court are liable to be punished under Order 21 Rule 32*



*C.P.C read with Section 151 C.P.C in which, they may be detained in Civil imprisonment or their properties be attached.*

10. *On the other hand, learned counsel for the respondents have opposed the arguments of learned counsel for the applicants on the ground that respondent no.3 Harpal Singh has himself stepped into the witness box as RW-1 to prove his affidavit Ex.RW-1/A which is reassertion of the facts pleaded in the reply to the present application and he has also examined RW-2 Inderjit Singh, Panchayat Member who has duly proved his affidavit Ex.RW-2/A, as per which on 04.06.2015, Manish Kumar, Halga Patwari had visited the spot alongwith lambardar Shalinder Singh, Labh Singh, Panch, Bikramjit Singh, Sarpanch, Gurdarshan Singh Panch and the respondents and had prepared his report as per the revenue record in his presence regarding higher level of some khasra numbers than the other khasra numbers. In support of his contentions, he has proved original report dated 04.06.2015 from file titled as 'Gurmail Singh Versus Balwant Kaur and others' and identified his signatures on the report dated 04.06.2015, certified copy of which is Ex. R1. Further, learned counsel for the respondents has also tendered into evidence certified copy of statement of Manish Kumar, patwari as Ex.R2.*

11. *Further, learned counsel for the respondents has drawn attention of this Court towards cross-examination of applicant no.1 Balwant Kaur who has admitted the fact that she is resident of Patiala but has wrongly claimed to have residential house at village Bharo also. She has admitted the fact that she is residing for the last 30-35 years at Patiala and her land is cultivated through lessee; that their land was earlier cultivated by the respondents and now from the last 4 years the same is cultivated by third person but she could not tell the killa number of the property which is given on lease by them or regarding the property cultivated by the respondents or the name of person who is cultivating her land. She has deposed that the name of said person is Tetual and one killa is cultivated by Gurmail Singh. Though, she has alleged that she had filed suit against the respondents who have violated the stay order passed by the Court regarding which present application has been filed but she could not tell the date, month or time when the earth was dug by the respondents from their land but claims that same was dugged at 4.00 P.M with the help of JCB machine and the respondents have filled the trolleys by lifting the earth from their property and on seeing her car, they stopped. She has also alleged that one of the tractor was owned by the respondents and other was from outside but she cannot tell its registration number. Though, she has alleged that she*



*made inquiry regarding its ownership but could not get the same and even not informed Sarpanch or other person of the village regarding the occurrence. She even could not tell the name of the purchaser or owner of brick kiln who had purchased the earth for its manufacturing. She has further deposed that she entered her land and clicked the photographs of the trolleys filled with earth and thereafter reported the matter to the police but she cannot tell where the trolleys filled with earth were unloaded. She has further deposed that she did not visit the site thereafter due to fear and threat of the respondents and even cannot tell the name of persons who have informed her that the respondents were digging the earth from her property. She has further admitted that she has not seen any agreement o the respondents executed in fayour of owner of brick kiln.*

*12. Accordingly, learned counsel for the respondents has argued that the applicants cannot tell which khasra number was cultivated by whom and which khasra number was cultivated by the respondents. In fact, killa nos.59//20, 1 and 2 are cultivated by the respondents and the applicants have concocted the story of digging earth by the respondents for manufacturing of bricks which is factually incorrect and rather the respondents who have got the report of patwari regarding higher level of some of the killa numbers than the other killa numbers were levelling the level of their killa numbers to improve its quality for the purpose of better cultivation. Moreover, the applicants have failed to prove as to whom, the respondents have sold the earth for manufacturing of bricks or if any agreement was executed between them and rather she has clearly deposed that she has not seen where the trolleys were unloaded. Actually during rainy season, water from the killas on higher level flows to other killas of lower level due to which the crop is destroyed and in order to avoid such situation, the respondents have only levelled their land by digging earth from one killa and throwing the same in other killa. In support of his contentions, learned counsel for the respondents has relied upon judgment of Hon'ble Punjab and Haryana High Court titled as **Krishan Dev Vs. Nand Kishore and others 2015(2) PLR 755** wherein it is held that constructions are carried out for the improvement of the suit land and to make the best use of the suit land in a proper manner to make it more fit for the agricultural purposes, as such, objections filed by the respondents in execution petition under Order 21 Rule 32 C.P.C were allowed and execution petition was rightly dismissed. On similar point, he has relied upon judgment of Hon'ble Punjab and Haryana High Court titled as **Mohinder Singh Versus***



**Karamvir & others 2010(4) PLR 705** wherein it is observed that for violation of decree, violator cannot be penalised under Section 51 and Order 21 Rule 32 C.P.C as the said provisions are to enforce the decree and not to penalise the violator who may penalise under contempt of Courts Act. Accordingly, prayer for dismissal of the petition is made.

13. After hearing the arguments of learned counsel for both the parties, this Court is of the considered view that present application has been filed by applicants under Order 21 Rule 32 C.P.C read with Section 151 C.P.C for the detention of the respondents in civil imprisonment or for the attachment of the property of the respondents for their willfully disobedience of judgment and decree dated 06.02.2015 vide which suit no.48 of 16.04.2013 filed by the applicants against the respondents was decreed on the ground that the respondents have intentionally dug the earth after passing of decree dated 06.02.2015 and have violated the order passed by the Court and be penalised for the same.

14. On the other hand, it is the case of the respondents that they have not violated the decree of the Court and rather they have improved the quality of their land which is not properly levelled and regarding which they have also filed a separate suit for permanent injunction restraining the applicants from interfering in the levelling work done by the respondents on their own land. However, the perusal of case file, the evidence led by both the parties and the documents being relied upon by them clearly reveals that admittedly, applicants have filed Civil Suit no.48 dated 16.04.2013 against the respondents for permanent injunction restraining them from raising any construction or from digging the earth for manufacturing of bricks till the pendency of partition proceedings which was decreed vide judgment and decree dated 06.02.2015. Learned counsel for the respondents have claimed that they have not violated the decree dated 06.02.2015 as the same was passed specifically regarding restraining the defendants from digging the earth for manufacturing of bricks. However, in order to prove such allegations, the applicants have not named the owner of the brick kiln or produced agreement executed between them. On this point, this Court is convinced with the arguments of learned counsel for the applicants that she is old widow lady residing at Patiala and the respondents are residing in the village and all the respectables of village are bound to support the respondents and when she had gone to her own land she saw the respondents digging earth from their land which is not partitioned yet and clicked the photographs regarding the same to which the respondents have no legal right as partition



*proceedings are not concluded. The perusal of entire evidence also reveals that the respondents have failed to examine the patwari who has alleged to visit the spot and prepared his report in the presence of RW-2 Inderjit Singh and respectables of village. Even RW-2 Inderjit Singh in his cross-examination has deposed regarding the lifting of earth by the respondents from killa no.59//21 and filling of earth in killa no.59//1 but as per the case of the respondents the level of land of killa no.59//20 is higher than the level of earth of killa no.59//1 and 2 as per the report of patwari. Even RW-2 Inderjit Singh has mentioned that patwari did not demarcate the property but only snapped the photographs which are not produced on the Court file and rather the evidence of the applicants clearly reveals that infact the respondents have dug the earth from the joint land which is not partitioned yet. Even if the respondents have claimed that they are in possession of killa no.59//20, 1 and 2, in absence of completion of partition proceedings, they cannot claim their exclusive possession on the same and they cannot change the nature of the land without the consent of other co-sharers and that too in case they wanted to level the land, they could have purchased the trolley of earth which is worth Rs.400/- only as per the statement of RW-2 Inderjit Singh. As such, since the respondents have themselves admitted that they have dug the earth for whatever purpose, without the consent of other co-sharers, they have disobeyed the judgment and decree dated 06.02.2015 which was passed restraining the respondents from digging the earth and they are liable to be proceeded against under Order 21 Rule 32 C.P.C read with Section 151 C.P.C. Hence, this issue is decided in favour of the applicants and against the respondents.*

**Issue no.2 (Relief)**

*15. In sequel to my discussion under issue no.1, applicants have willfully failed to obey decree dated 06.02.2015 passed in Civil Suit bearing. no.48 of 16.04.2013 titled as 'Balwant Kaur and another Versus Gurmail Singh and others', therefore, their share will be attached on filing of the list of property by the applicants within a period of one week. The attachment will remain in force for a period of 6 months and even if thereafter, the disobedience of the decree remains, the applicants will be entitled to move the appropriate application for further proceedings. Execution application is disposed of accordingly. File be consigned to the record room."*



6. A perusal of the above order shows that learned Additional Civil Judge (Senior Division), Sangrur, has categorically dealt with each and every aspect of the case and rightly held that the petitioners/respondents have themselves admitted that they have dug the earth for whatever purpose without the consent of other co-sharers. Therefore, they have disobeyed the judgment and decree dated 06.02.2015, which was passed restraining them from digging the earth.

7. Learned counsel for the petitioners has relied upon Rule 3 of the Punjab Minor Mineral Rules, 2013. The same is reproduced as under:-

*“3. Exemptions.- (1) Notwithstanding anything contained in these rules, no rent, royalty or permit fee shall be charged or no permit/weightment slip shall be required for-*

*(i) extraction of ordinary clay or ordinary sand by hereditary 'Ghumiaris', who prepare earthen pots on a cottage industry basis, whose turnover during a year does not exceed two lac rupees;*

*(ii) levelling of any agricultural fields by a land owner or possessor, as the case may be and disposal of any excess minor mineral accumulated in such activity;*

*(iii) for removal of any minor mineral by the land owner or the possessor/Panchayat as the case may be, from the land in their possession for meeting land-filling requirements either in another agricultural field owned or possessed by them or for meeting their bona-fide/personal requirements including religion and developmental activities.*

8. A bare reading of the above Rule would show that it is not applicable in the case of the petitioners/respondents, since this Rule is applicable in case of the person, who are granted exemptions. So far as the judgments cited above are concerned, the facts and circumstances of the



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present case are distinguishable from the facts and circumstances of the above referred to judgments.

9. In view of the above, I do not find any illegality or infirmity in the impugned order dated 10.10.2018 passed by learned Additional Civil Judge (Senior Division), Sangrur, and the same does not warrant any interference by this Court. Consequently, the present petition is hereby **dismissed** and the impugned order dated 10.10.2018 is accordingly upheld.

10. Pending application(s), if any, also stand disposed of.

**(SUDEEPTI SHARMA)**  
**JUDGE**

**29.07.2025**

Virender

Whether speaking/non-speaking : Yes/No  
Whether reportable : Yes/No