

**Dalel Singh Vs. Dharam Singh**

**Dalel Singh Vs. Dharam Singh**

**SooperKanoon Citation :** [sooperkanoon.com/918499](http://sooperkanoon.com/918499)

**Court :** Himachal Pradesh

**Decided On :** May-04-2011

**Judge :** Deepak Gupta, J.

**Acts :** [Constitution of India](#) - Article 227; Code of Civil Procedure (CPC) (C.P.C) - Orders 21, 41 Rule 32, 5

**Appeal No. :** CMPMO No.141 of 2011

**Appellant :** Dalel Singh

**Respondent :** Dharam Singh

**Advocate for Pet/Ap. :** Mr. Ajay Sharma, Adv.

**Judgement :**

1. By means of this petition under Article 227 of the [Constitution of India](#), the petitioner has prayed that the application under Order XXI, Rule 32 of the Code of Civil Procedure filed by the decree holder-respondent be dismissed.

2. The undisputed facts of the case are that the respondent-plaintiff filed a suit praying for a decree of permanent prohibitory injunction restraining the defendant-present petitioner (hereinafter referred to as the 'judgment debtor') from interfering in his possession. The suit was dismissed by the learned Trial Court. An appeal filed by the plaintiff-respondent was allowed and a decree was passed against the present petitioner. This decree has been challenged in RSA No.604 of 2009.

3. Sh.Ajay Sharma, learned counsel for the petitioner-judgment debtor submits that since the decree was only for permanent prohibitory injunction, the application filed under Order XXXI, Rule 5, CPC was withdrawn and thereafter, an application under Order XXXIX Rules, 1 and 2, CPC was filed and the Hon'ble Judge hearing the RSA No.604 of 2009 granted an order directs the parties to maintain status quo on 27th September, 2010. Sh.Sharma further submits that the Execution Petition filed by the decree holder cannot proceed, in view of the order of status quo.

4. In my view, the appropriate remedy for the petitioner is to file an application in the RSA itself. The question whether the execution proceedings should be allowed to continue or not is a question which the Hon'ble Judge hearing the RSA must decide and in the proceedings under Article 227 of the [Constitution of India](#), I would not like to interfere in the jurisdiction of the Hon'ble Appellate Court. Therefore, the petition is rejected with liberty reserved to the petitioner to file an appropriate application in RSA No.604 of 2009.

5. The petition is disposed of in the aforesaid terms. No order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**