

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No.89 of 2024

Decided on: 22nd September, 2026

Faqir Chand and others

...Petitioners

Versus

Mangat Ram and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Abhishek Nagta and Mr. Mohit Jaitak, Advocates.

For the respondents: Mr. N.K. Thakur, Senior Advocate with Mr. Divya Raj Singh, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have challenged the order dated 26.02.2024, passed by the learned Senior Civil Judge, Court No.1, Una, District Una, H.P., whereby the execution petition preferred by them under Order XXI Rule 32 of the Code of Civil Procedure (in short "CPC"), has been dismissed.

2. The petitioners had instituted a suit before the learned Civil Judge (Jr. Divn.) Court No.II, Una, District Una, H.P. and the said Civil Suit was with respect to the land comprised in

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Khewat No.134, Khatauni No.197 min, Khasra No. 598, measuring 0-38-54 hectares, as entered in the Missal Haqiat Bandobast 1996-97, situated in village Palkwah Khas, Sub Tehsil Haroli, District Una, H.P. The suit preferred by the petitioners was decreed on 31.01.2011 and the respondents were restrained from raising any sort of construction over the suit land.

3. The petitioners had instituted the execution petition seeking execution of the judgment/decreed, averring that despite the order of permanent injunction dated 31.01.2011, the respondents are still continuing to raise construction over the suit land. It was alleged that the respondents had raised construction by encroaching upon a part of the suit land.

4. The respondents filed reply to the execution petition and denied the allegations made therein. It was specifically averred that they had neither raised any sort of construction on the suit land nor had ever threatened to encroach upon the suit land. It was also denied that they have ever collected the building material over the suit land. It was asserted that the allegations have been levelled simply to create grounds for

filing the execution petition.

5. The learned executing Court framed the issues in the execution petition and thereafter granted opportunities to the parties to lead their evidence. After recording the evidence led by the parties, the executing Court came to the conclusion that the evidence led by the petitioners was not clear and cogent and the deposition of AW-1 was also not clear as it is not stated case of the said witness that he himself had witnessed the alleged acts of violation, rather he admitted of having litigation with the respondents and instead of denying, he peculiarly feigned ignorance about certain facts suggested to him, which in respect of the same heavily reflected upon the credibility of his deposition.

6. From the deposition of another witness examined by the petitioners as AW-2, it was noticed that he had not preferred any objections against the report of the Local Commissioner (in short "LC"), so furnished in the main case, though he alleged the same to be incorrect and as such the Court came to the conclusion that the petitioners had failed to prove any violation by the respondents and as such dismissed

the execution petition preferred by the petitioners, vide order dated 26.02.2024.

7. The petitioners have assailed the said order passed by the learned executing Court *inter alia* on the ground that the learned executing Court has erred in dismissing the execution petition.

8. Learned counsel for the petitioners vehemently argued that once as per the evidence led by the petitioners, more particularly, the report furnished by the Tehsildar, wherein it was clearly mentioned that the respondents have encroached upon Khasra No.2497/598/1 and further the tatima was also prepared, the learned executing Court has erred in dismissing the execution petition preferred by the petitioners. He further argued that the learned executing Court has disbelieved the testimony of AW-1 merely on the basis that the said witness also had a litigation with the respondents. The findings returned by the learned executing Court that the certified copy of the decree dated 31.01.2011 was not tendered in evidence is also wrong and as such prayed for quashing the said order and allowing the execution petition preferred by the petitioners.

9. On the other hand, learned senior counsel representing the respondents has supported the order passed by the learned executing Court. Learned senior counsel vehemently argued that since there was no iota of evidence led by the petitioners to prove that the respondents have violated the judgment/decreed sought to be executed, the learned executing Court has rightly dismissed the execution petition.

10. I have heard the learned counsel for the parties and also perused the record carefully.

11. No doubt, in the report submitted by the Tehsildar, it was mentioned that there was an encroachment on Khasra No.2497/598/1, however, if the judgment/decreed, which is sought to be executed, is perused, the petitioners themselves had admitted that they had given Khasra No.598/1 to the respondents, as per the compromise entered into between them and this finding has been recorded by the learned trial Court while decreeing the suit. The said finding has not been challenged by the petitioners and further the learned counsel for the petitioners has not even disputed the said fact while addressing the Court.

12. The learned executing Court has taken note of the fact that the statement made by one of the witnesses i.e. AW-1, did not contain a specific deposition, from which, it is clear that the respondents had violated the decree and he has not witnessed the alleged act of violation. For the purpose of holding the respondents liable for violation of the decree, it was incumbent upon the petitioners to prove that the respondents had violated the decree and since no cogent evidence was produced by the petitioners in that regard, the conclusion arrived at by the learned executing Court that there was no violation, does not call for any interference by this Court.

13. So far as the findings returned by the learned executing Court that the petitioners had failed to tender on record the certified copy of the decree, sought to be executed, is concerned, the said finding is wrong for the reason that the learned executing Court could have raised objection in respect of the decree, which was sought to be executed, in case the respondents were denying that the trial Court had not decreed the suit preferred by the respondents and the decree was not passed on 31.01.2011, which was sought to be executed by the

petitioners. Once the respondents had not disputed that the decree sought to be executed is not the one which is sought to be executed, the trial Court could not have returned the finding that for no good reason the petitioners have failed to tender on record the certified copy of the decree and such finding returned by the learned executing Court is not sustainable.

14. This Court, while exercising the revisional jurisdiction, can only interfere with the order passed by the learned executing Court, in case the learned executing Court had exercised its jurisdiction not vested with it, caused any material prejudice to the petitioners or had committed any illegality. The learned executing Court, after considering the evidence led by the parties, had come to the categorical finding that the petitioners have not been able to prove that the respondents have violated the decree, which is sought to be executed and thus, the order passed by the learned executing Court does not call for any interference.

15. Consequently, I do not find any merit in the present revision petition and the same is accordingly dismissed. The record of the learned executing Court be send down. No order

as to costs. Pending application(s), if any, shall also stand disposed of.

22nd September, 2026
(*ankit*)

(Jiya Lal Bhardwaj)
Judge