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

**Civil Revision No.7310 of 2018
Date of Decision: 30.10.2018**

Saroj

.....Petitioner

Vs

Jul Bhan Giri and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Susheel Gautam, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 08.05.2018 passed by the Civil Judge (Sr. Divn.) Ganaur, vide which objections filed by the petitioner/judgment-debtor No.3 were dismissed and against the order dated 04.09.2018 passed by the Addl. District Judge, Sonipat, upholding the order dated 08.05.2018.

[2]. Brief facts of the case are that plaintiff/respondent No.1 filed a suit for possession by way of partition and permanent injunction in respect of land marked by letters 'ABCDEFGH' situated within the *abadi deh* of village Baraut, Tehsil Ganaur, District Sonipat, comprised in killa No.30/23/2/2(6-0), 24/1/2 (4-10) measuring 605 sq. yards which was purchased by the

plaintiff from Balbir Singh vide sale deed dated 29.06.1999. The property was claimed to be identifiable by the dimensions as shown in the suit. The possession was delivered to the plaintiff. The allegations were made that the defendants had encroached upon the land of the plaintiff and sold the same vide sale deed dated 09.03.2009, mutation of which was also sanctioned. Defendant No.1 had constructed a shop thereupon and defendant No.2 had encroached upon the portion marked by letters 'LJKD'.

[3] The suit was decreed vide judgment and decree dated 16.08.2013 and defendants were directed to hand over possession of the suit property to the plaintiff within a period of two months.

[4]. The judgment and decree of the trial Court was upheld by the lower Appellate Court vide judgment and decree dated 16.09.2014.

[5]. No Regular Second Appeal was filed by the judgment debtors. The decision of the trial Court and the lower Appellate Court had attained finality. Thereafter, judgment-debtor No.3/petitioner filed objections on the premise that the petitioner had purchased the property in question from Sant Lal and one shop was already constructed over the suit property. Petitioner was defendant No.3 in the suit which was decreed. The stand of

the petitioner on the same cause of action was negated by the Courts below. Even the executing Court dismissed the objections against which appeal was preferred before the lower Appellate Court which was also dismissed vide order dated 04.09.2018.

[6]. Petitioner cannot be permitted to rake up the issue which was decided in the main course. Petitioner seeks to initiate second round of litigation with the help of objections before the executing Court so as to deprive the decree-holder from taking possession of the suit land. Executing Court cannot travel beyond the decree which has already attained finality. The warrants of possession have already been issued qua the suit property.

[7]. The alleged plea of the petitioner being co-sharer cannot be appreciated, even on the strength of **Lekh Ram and others vs. Prabhu Dayal and others, 2015(7) R.C.R. (Civil) 664** as the facts involved in the said case were altogether different. In the instant case, there was an encroachment over the suit property by the defendants. The illegal encroachment was sought to be removed by way of filing suit for possession which was decreed. In the execution of said decree, the encroachment has to be removed. After removal of the encroachment, if any of the party claiming his or her status that

of co-sharer, would be at liberty to seek partition in accordance with law. The initiation of partition proceedings even at the instance of the petitioner would not hamper the execution of lawful decree passed against the petitioner.

[8]. Looking to the aforesaid facts, I find that there is no illegality or error of jurisdiction in the impugned orders passed by the Courts below in dismissing the objections of the petitioner/judgment-debtor No.3. This revision petition is accordingly dismissed.

October 30, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No