

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

CR-5230-2022(O&M)

Date of decision:-12.12.2022

Saligram

...Petitioner

Versus

Dwarka and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajesh Lamba, Advocate
for the petitioner.

Mr.Tanmoy Gupta, Advocate
for the respondent No.1/caveator.

H.S. MADAAN, J.

1. Decree-holders Dwarka Prashad and others had filed an application seeking execution of the judgment and decree dated 4.9.2010 vide which final decree had been passed in terms of mode of partition dated 17.5.2008. During the course of such proceedings, JD/defendant No.1 through his LRs had filed objections that execution application is not maintainable; that in garb of the application, the decree-holders intending to take possession of the area in excess of their shares since it has been reduced in terms of judgment and decree dated 8.3.2018 passed by ACJ(SD), Hodal in civil suit titled 'Om Prakash and others Versus Radhey and others'; that the shares of the parties (the decree-holders as well as JDs) were wrongly mentioned in the preliminary as well as in the final

decree, therefore, the execution application be dismissed.

2. After hearing arguments, the Executing Court had dismissed those objections. The operative part of the order runs as follows:

7. *It is not in dispute between the parties that final decree was passed vide the said judgment and decree dated 4.9.2010. It is not the case of the JDs that they all or any of them preferred RSA against the said judgment and decree, or that the said judgment and decree has not attained finality. It is not the case of the judgment debtors that possession has been delivered in terms of the said judgment and decree dated 4.9.2010.*

8. *The judgment debtors have contended that the shares of the parties were not correctly mentioned in the preliminary as well as final decree; and that the shares of the DHs have been reduced in terms of judgment and decree dated 8.3.2018 passed by Ms.Shelza Gupta, ACJ(SD), Hodal in civil suit titled “ Om Prakash and others versus Radhey and others.”. The present is the execution petition and being so, the JDs cannot take objections ought to be taken at the time of passing of final decree. Moreover, the present court, being the executing court, has to decide/adjudicate all questions relating to the execution, discharge or satisfaction of the decree, and not otherwise.*

9. *It is not the case of the judgment debtors that they all or any of them have/has preferred any RSA before the Hon'ble*

Punjab and Haryana High Court, Chandigarh challenging the judgment dated 22.3.2013 of Ld. ADJ, Palwal. The law is settled to the extent that the execution proceedings cannot be stopped until there is specific stay on the execution of the judgment and decree. Accordingly, the objections are hereby dismissed, being devoid of merits.

3. Feeling aggrieved by such order, the objectors had filed an appeal before District Judge, Palwal, which was assigned to Additional District Judge, Palwal, who after detailed discussion concluded that the appeal against order rejecting objections under Section 47 is not maintainable. Therefore, the appeal was dismissed vide order dated 14.9.2022.

4. Feeling dissatisfied the objectors have approached this Court by way of filing revision petition. The respondent No.1 has also filed caveat petition.

5. I have heard learned counsel for the parties besides going through the record and I find that such objections filed are nothing but a delaying tactics on the part of the objectors. As pleaded in the grounds of revision itself preliminary decree was passed on 20.2.1990, final decree was passed on 4.9.2010, thereafter the proceedings are going on and have not been finalised so far. The only motive of the revisionist appear to be to stretch the proceedings further to the extent possible by exploiting every possible loophole in the procedural law. The Executing Court is required to execute the decree, which has become final and binding between the

parties and it is difficult to understand as to how the decree-holder take more than the share allotted to them in the decree. The judgment and decree said to have been passed somewhere in the year 1991 should have been brought to the Court at the earliest possible. The objectors were not supposed to go to slumber and one fine morning waking up and raising hue and cry that shares have got changed after passing the preliminary decree and final decree. It appears that JDs want to have have a denovo trial by putting the clock back and deny the decree-holders fruits of the decree passed in their favour inasmuch as the preliminary decree was passed more than 32 years back and final decree more than 12 years back. It may be mentioned here that at the time of passing final order, the Executing Court may look into the decree etc. so claimed by the JDs and if some adjustment is required to be made with regard to delivery of possession out of joint property then it may do so in accordance with law.

6. As far as the present revision is concerned, the same is without merit and is dismissed accordingly.

12.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No