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

CR No. 6253 of 2022

DATE OF DECISION : 05.01.2023

Rajinder

...Petitioner

versus

Mahinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikram Singh, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

Assailed herein is an order dated 07.12.2022 (Annexure P-3) passed by Executing Court of learned Additional Civil Judge (Senior Division), Indri, vide which third party objections filed by the petitioner were dismissed.

2. Execution sought is of decree for suit for possession by way of specific performance of the agreement to sell dated 21.05.2013.

3. I have heard learned counsel for the petitioner and gone through the record.

4. Impugned order is premised, *inter alia*, on the following reasoning:

“xxx

Arguments heard and record perused. It is observed that objector-Rajinder filed third party objections on 01.11.2022 on the ground that the land in question is not partitioned till date, therefore, execution cannot be affected. It is observed that the merits of execution of judgment and decree dated 19.10.2019 is not affected merely because the

land in question is joint. Relief of specific performance of agreement dated 21.05.2013 has been granted in favour of DH. The right of third party qua the share alienated by JD does not affect the right of DH to get the execution of judgment and decree dated 19.10.2019. Also, as stated by the objector that the co-sharers have filed a partition case makes it clear that they are agitating their right by availing the right remedy, hence, the objections do not stand merit. The objections are baseless and without merits, therefore, same are dismissed and accordingly disposed of.”

5. Having heard the arguments of learned counsel for the petitioner, there is no room for interference in the aforesaid valid reasons recorded by the learned Tribunal.

6. The petitioners contentions herein *inter alia* are that the judgment debtor (vendor of the respondent decree holder) is though owner of land measuring 2 kanal 14.6 marls, but the decree holder obtained judgment and decree against the judgment debtor for possession of 7 kanals 2.6 marlas. Further, learned counsel contends that the land is still joint and the execution of decree as such will cause irreparable loss to the petitioner. The execution petition of the decree holder was/is thus not maintainable.

7. Settled law is that, the executing court is not to go behind the decree. Decree has to be executed as it is. Perusal of impugned order shows that the learned executing Court has duly considered the contention and was fully conscious that the land is still joint. But being executing court, it cannot and ought not to go behind the decree which has attained finality and, it is therefore, that the objections were rejected giving sound and convincing reasons. I am inclined to agree with the same.

8. Order assailed herein, is in fact, self-explanatory. It is borne out that not only the petitioner is a third party to the decree but even otherwise, he took no steps to defend his interest in the suit proceedings. Apart there from, the objector/petitioner herein claims that joint property is not partitioned and the land in question cannot be sold as all the co-sharers are having respective shares in the joint property. Even if the land in question is a joint property, the co-owners are at liberty to institute partition proceedings to get their co-shares determined qua their respective portions. The proposed filing of partition proceedings, in any manner, cannot be a ruse to obstruct the execution of decree. Needless to say that the decree can only be executed as per the specific performance. In case undivided share has been sold in a joint property, the Decree Holder would be entitled to the extent of his share which may be determined in the partition proceedings.

9. No material irregularity in law or procedure has been committed by the learned Tribunal, so as to exercise extraordinary revisional jurisdiction herein.

10. In the premise, the instant revision petition is dismissed.

JANUARY 05, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No