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

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Date of Decision: 30.01.2024.

Jagmohan Singh Nagpal and others

...Petitioners.

Versus

The Rail Coach Factory Employees Cooperative
House Building Society Ltd. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Munish Gupta, Advocate
for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 14.09.2023 passed by learned trial Court, vide which objections dated 18.11.2019 (Annexure P-4) filed by the petitioners/objectors in Execution Application No.476 dated 12.09.2018 titled as '*The Rail Coach Factory Employees Vs. Gram Panchayat Khambra*', were dismissed.

2. The brief facts which are relevant for the purpose of disposing of the present revision petition are that respondent No.1 filed a suit for possession of land measuring 5220 square feet comprised in Khewat No.49/46, Khatoni No.52, Khasra No.20//6, Hadbast No.295, as per Jamabandi for the year 2006-07, situated in Village Khambra, Tehsil and

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District Jalandhar, against respondents No.2 and 3. It was alleged that respondent No.1 is owner of the suit land and respondents No.2 and 3/defendants had encroached upon the said land. When the said encroachment came to the knowledge of respondent No.1 then demarcation was got conducted from the revenue officials, on the application of respondent No.1, and it was found that the Gram Panchayat was in illegal possession of portion of land comprised in Khasra No.20//6. Respondents No.2 and 3 were requested to remove their illegal encroachment but to no effect.

3. The aforesaid suit filed by respondent No.1 was decreed by the Trial Court, vide judgment and decree dated 25.07.2018. The appeal preferred by respondents No.2 and 3 was dismissed by the First Appellate Court, vide judgment and decree dated 19.03.2019. The appeal preferred before this Court vide RSA-3225 of 2019 by respondents No.2 and 3 was also dismissed vide judgment dated 08.07.2019.

4. In the meantime, respondent No.1 filed Execution Application (Registration No.476/2018 dated 12.09.2018) seeking possession of the land in question and during the pendency of the execution application, the objections were filed by the petitioners before the Executing Court to which reply was also filed by respondent No.1/ decree holder, denying the averments made in the said objections. Vide impugned order dated 14.09.2023, the Executing Court had dismissed the objections of the petitioners.

5. Aggrieved by the said order, the present petition has been filed by the petitioners before this Court.

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6. Learned counsel for the petitioners has contended that the Executing Court had dismissed the objections of the petitioners without due application of mind and though the objections of the petitioners have been reproduced in the said order, but by merely mentioning that the objectors have not filed any appeal against the original judgment and decree and there was no stay order against the original judgment and decree dated 25.07.2018, the objections have been wrongly dismissed. He has contended that decree holder is not exclusive owner of Khasra No.20//6, so question of executing the decree and delivering possession to decree holder pursuant to the said decree is not legally permissible. The petitioners/ objectors are co-sharers in the suit land and the decree obtained by respondent No.1 is apparently only an eye-wash as this fact was not disclosed to the Courts below that respondent No.1 was not the exclusive owner of the suit property. He has further contended that the objectors being the Class-1 legal heirs of Raj Kaur have inherited the share of Raj Kaur in the suit property. He has contended that the judgment and decree dated 25.07.2018 having been obtained at the back of the petitioners/ objectors, without impleading all the co-sharers and that too against judgment debtors (respondents No.2 and 3) who had no concern with the land in question, is not legal in the eyes of law and under these circumstances objections filed by the petitioners/ objectors ought to have been allowed.

7. I have heard learned counsel for the petitioners and have gone through the relevant record.

8. Vide judgment and decree dated 25.07.2018, it has been held

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that respondent No.1 society is owner of the suit land comprised in Khasra No.20//6 and as per the demarcation report Ex.P7 brought on record in the said suit, it was held that the defendant-Gram Panchayat had illegally encroached upon some portion of the suit land. The same finding was upheld by the First Appellate Court vide judgment and decree dated 19.03.2019 and the concurrent findings by both the Courts below were again upheld in RSA-3225-2019, decided on 08.07.2019. Admittedly, the judgment and decree dated 25.07.2018 passed by the trial Court, implementation of which has been sought, is still existing and has not been set aside till date by any competent Court of law. It is well settled proposition of law that the Executing Court cannot go behind the decree and it is to execute the decree as it is. It has been rightly pointed out by the trial Court in the impugned order that, as no appeal against the judgment and decree dated 25.07.2018 had ever been preferred by the objectors, now under the garb of the present objections, the objectors/ petitioners cannot raise the contention that the aforesaid decree was a collusive decree between the parties which had been obtained by fraud, by concealing the true facts and especially when the said judgment and decree had been upheld by the First Appellate Court and by this Court. Even, no separate suit was ever filed by the petitioners/ objectors for challenging the said decree being result of fraud.

9. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands

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dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

30.01.2024.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No