

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

(213)

CR-6915-2024 (O&M)

Date of Decision:-**07.08.2025**

KAMAL KHAN (DECEASED) THROUGH HIS LEGAL REPRESENTATIVE

... Petitioner

Versus

RASHID AND ANOTHER

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Dhirinder Chopra, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

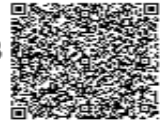
VIRINDER AGGARWAL, J. (Oral)

1. Kamal Khan, the revision-petitioner has filed the present petition under Article 227 of the Constitution of India through his LR assailing the order dated 30.07.2024 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Punhana, District Nuh in Execution No.54 of 31.07.2019 titled as "Rashid vs. Islam and another", vide which the objection petition filed by the revisionist was dismissed on the grounds that Firoz Khan was owner in possession of ½ share of agricultural land bearing Khewat No.118 Khata No.386, 387, 388, 389, Khasra No.695(01-04), 696 min(00-19), 712(00-18), 494(02-03), 696 min(00-18), 713(00-15), total measuring 06 Bighas 17 Biswas situated within revenue estate of village Amka Tehsil Ferozepur Jhirka District



Gurgaon. He mortgaged with possession land to the extent of $\frac{1}{4}$ share with defendants-Islam and Kamal Khan for a sum of ₹400/-, mutation No.518 was sanctioned on 29.09.1955. Firoz Khan was succeeded by his son Suleman and Mutation No.1497 was sanctioned on 24.05.1985. In consolidation proceedings new rectangle numbers measuring 45 kanals 8 marlas were allotted to Suleman in lieu of land previously held by Suleman. Suleman sold half share of the land to decree-holder contesting respondents vide sale deed dated 03.07.1985 subject to mortgage with Islam mortgagee. In consolidation proceedings in lieu of $\frac{1}{4}$ share of suit property, which was mortgaged with possession with defendant land bearing Rectangle No.18 Killa No.23/2(02-04), Rectangle No.22 Killa No.3/2(07-00) total measuring 9 Kanals 4 Marlas was allotted.

2. A suit for possession by way of redemption of mortgage on payment of ₹400/- was filed on 16.07.1985. The suit was dismissed vide judgment and decree dated 10.10.1988, first appeal was dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated 01.04.1989. Regular Second Appeal was allowed by this Court vide judgment and decree dated 17.09.2013 passed in RSA-1790-1989. Execution petition was filed for issuance of warrant of possession of the land bearing Khasra No.695(01-04), 696 min (00-19), 712 (00-18), 494 (02-03), 696 min (00-18), 713 (00-15), total measuring 06 Bighas 17 Biswas and no relief was claimed with regard to Rectangle No.18 Killa No.23/2 (02-04), Rectangle No.22 Killa No.3/2 (07-00), total measuring 09 Kanals 04 Marlas



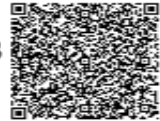
in the execution petition amount of ₹400/- was deposited in favour of judgment debtor on 31.07.2019.

3. Revisionist filed objection dated 22.11.2023. Learned Additional Civil Judge (Senior Division), Punhana after hearing arguments and calling for reply, dismissed the objection vide impugned order. Aggrieved by the same, revision petition was filed. Notice of the revision petition was served upon decree-holders, who appeared through Sh.Amit Jain, Advocate and proforma respondent appeared through Sh. Akram Hussain, Advocate, who filed his power of attorney today in the Court, which is taken on record.

4. Arguments heard.

5. Learned counsel for the revisionist argued that execution petition has been filed with regard to the Khasra numbers which were previous to the consolidation proceedings and possession of entire land is being sought, whereas the decree holders are entitled to possession of only mortgaged land, so the dismissal of objection petition vide impugned order amounts to material illegality and required to be set aside.

6. Whereas learned counsel for the respondents/decreed-holder argued that there is no illegality or infirmity in the impugned order, objections have rightly been dismissed and that multiple revision petitions are being filed to delay the execution of the decree in order to stall the respondent/decreed-holder from reaping the fruits of the decree. He pointed out that earlier revisionist has filed a revision petition bearing No.3826 of 2024, which was disposed of on 11.07.2024, vide which directions were given to the Executing Court to dispose of the objection petition of the

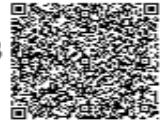


revisionist. Another revision petition was filed vide CR-6641-2024 decided on 14.11.2024, which was withdrawn vide this revision petition the order dated 22.10.2024 was challenged. Another revision petition was filed by Islam through LRs against order dated 22.05.2024, whereby the objection petition of JD No.1 was dismissed vide order dated 11.07.2024 and in para No.7 of that order of the Co-ordinate Bench of this Court has observed as under :-

“As per the records, the predecessor-in-interest of respondent No.1-decreeholder solely and exclusively owned land measuring 6 bighas and 17 biswas which later got converted to 45 kanals in terms of consolidation proceedings and out of which 1/4th share was under mortgage in favour of predecessor-in-interest of petitioner-judgment debtor No.1 along with possession thereof.

Once a decree for possession by way of redemption qua the said 1/4th share was passed in favour of respondent No.1-decreeholder against payment of mortgage money which undisputedly already stands deposited by him, there could be no possible confusion at all while executing the said decree in pursuance to execution proceedings qua the possession of 1/4th land which was with the petitioner-judgment debtor No.1 only and the same was to be delivered to the respondent No.1-decreeholder, especially, when the possession of remaining 3/4th share was admittedly and undisputedly already with respondent No.1- decreeholder.”

7. Learned counsel for the respondent/decreed-holder argued that in view of the observations of the Co-ordinate Bench, the present objection petition filed by JD No.2 is abuse of the process of the Court and it be dismissed.



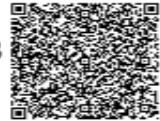
8. I have heard the learned counsel for the parties and have gone through the record minutely.

9. Para Nos. 6 and 7 of the impugned order read as under:-

“The main ground taken by Objector/J.D. no objection is that the ex-parte decree passed by Hon'ble High Court vide its judgment dated 17.09.2013, in RSA No. 1790 of 1989, whereby the Hon'ble High Court has decreed the suit of the plaintiff. cannot be executed as the same has been obtained by making misrepresentation and concealment of facts by D.H. before the Hon'ble High Court. However, in this regard this Court is of the considered view that it is duty of executing court to execute the judgment and decree passed by Hon'ble High Court in RSA No. 1790 of 1989 dated 17.09.2013 in case titled as "Rashid (appellant) Vs. Islam through LR's and others (respondents) vide which Hon'ble High Court decreed the suit of the D.H appellant filed tor redemption of mortgage on payment of mortgage money amounting to Rs 400/- The necessary paragraph is reproduced as under:-

In this view of the situation, the judgment and decrees of the Courts below are set aside and reversed and suit of the appellant is decreed for redemption of the mortgage on payment of the mortgage on payment of mortgage money amounting to ₹400/-.

The objections which have been filed by the objector/J D No.2 is filed mainly on the ground of misrepresentation and concealment of facts along with other grounds. However, in this regard this court is of the considered view that executing court cannot examine the validity of the order of the court which had allowed the execution of the decree Rather, executing court is duty bound to execute the decree passed by the court.”



10. The objection petition of the revisionist is to the effect that the plaintiff has wrongly elaborated the facts before this Court in RSA-1790-1989 and has obtained the decree by misrepresenting the facts and concealment of the facts. Learned Executing Court has rightly concluded that the Executing Court cannot go behind the decree and has to execute the decree as it existed. It was for the revisionist to challenge the decree before the Higher Court, but no appeal has been filed against the decree so far and the same had attained finality and the learned Executing Court is executing the decree as was passed by this Court. Consequently, the learned Executing Court has rightly dismissed the objection petition filed by the revisionist.

11 In the light of above, no material illegality or irregularity has been committed by the learned Executing Court while passing the impugned order, as such, the revision petition being devoid of merits is hereby dismissed.

12. However, observations made herein above may not to be construed as opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

13. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

07.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No