



CR-5192-2025 (O&M)

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

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**CR-5192-2025 (O&M)
Reserved on: 10.09.2025
Decided on :- 12.09.2025**

Fakhru and Another

....Petitioners

VERSUS

Ali Mohd. and Others

...Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. B.S.Tewatia, Advocate for the petitioners.

Mr. Yashvardhan Goyal, Advocate for the respondents.

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MANDEEP PANNU J.

1. The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned orders dated 14.07.2025 passed by the learned Civil Judge (Junior Division), Ferozpur Jhirka, District Nuh whereby two applications filed by the judgment debtors one under Section 48 CPC and another under Section 47 CPC and Order 21 Rule 97 CPC and Order 21 Rule 101 CPC read with Section 151 CPC were dismissed in execution proceedings arising from judgment and decree dated 28.10.2013.

Brief Facts

2. The respondents/decree holders had instituted a civil suit for permanent injunction restraining the defendants, who are the present petitioners, from dispossessing them from the suit property, from interfering in their peaceful possession, and from demolishing the residential house standing thereon. The defendants contested the claim, asserting that the plaintiffs were not residents of village Pathroli but of Sekhpura, Tehsil Kama (Rajasthan), for the past 50 years, and that the entries in the revenue records in their favour were illegal.



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3. The learned Civil Judge (Junior Division), Ferozpur Jhirka, functioning as a Mobile Court at Pinangwan, vide judgment and decree dated 28.10.2013, decreed the suit of the plaintiffs and restrained the defendants from dispossessing or interfering with the peaceful possession of the plaintiffs over the suit property and from demolishing their residential house or raising construction on the property. The appeal filed by the defendants was dismissed by the District and Sessions Judge, Gurugram, and the Regular Second Appeal filed before the High Court was also dismissed on 24.05.2018. Thus, the decree attained finality.

4. The decree holders thereafter filed their first execution petition. By order dated 24.11.2022, the Executing Court issued warrants of possession and the decree was executed. Subsequently, the decree holders filed a second execution petition for enforcement of the same judgment and decree dated 28.10.2013.

5. In this second Execution Petition, the judgment debtors moved applications under Section 48 CPC for dismissal of the execution petition and another under Section 47 CPC and under Order 21 Rules 97 and 101 CPC read with Section 151 CPC. It was pleaded that the decree holders had procured the decree fraudulently by concealing that they were not the legal heirs of Sakina widow of Deendar. It was alleged that in collusion with revenue officials, they had procured mutation No. 573 dated 08.04.1986 in their favour by illegal means, although the present petitioners are the only true legal heirs of Sakina. On this basis, it was contended that the decree dated 28.10.2013 was vitiated by fraud and is inexecutable.

6. The decree holders filed reply objecting to the maintainability of these applications. It was submitted that Section 48 CPC had long been repealed, that



objections to the first execution had already been dismissed, and that the present applications were barred by res judicata and amounted to abuse of process.

7. The learned Executing Court, by the impugned orders dated 14.07.2025, dismissed all the applications filed by the petitioners. The application under Section 48 CPC was dismissed as not maintainable, noting that the provision stood repealed decades earlier. The applications under Section 47 CPC and under Order 21 Rules 97 and 101 CPC were dismissed holding that the pleas raised by the judgment debtors had already been adjudicated in the suit and could not be re-agitated in execution, and that the JDs had no locus under Rules 97 and 101.

Submissions of learned counsel for the parties

8. Learned counsel for the petitioners argued that the decree itself was obtained by fraud on the basis of mutation No. 573 dated 08.04.1986, which was sanctioned in collusion with revenue officials. It was submitted that since fraud vitiates all judicial acts, a decree obtained by fraud is a nullity and cannot be executed. It was contended that the petitioners are the only legal heirs of Sakina, and a verification report from the revenue authorities now establishes their claim, which was not available earlier. It was further submitted that the executing court wrongly refused to consider this material and erred in holding that the applications were not maintainable.

9. On the other hand, learned counsel for the respondents/decree holders submitted that the issue of succession and entitlement to the property had already been adjudicated in the suit of 2013, in which the trial court considered and decided that the plaintiffs were the successors of Sakina. This finding was affirmed in appeal and in second appeal. The objections filed in the first execution petition were also dismissed on 24.04.2025. Filing fresh applications on identical grounds



amounts to res judicata and abuse of process. It was further contended that Section 48 CPC has been repealed and no application lies thereunder. Moreover, Order 21 Rule 97 is a remedy available to a decree holder facing obstruction, not to a judgment debtor, and therefore the petitioners have no locus under Rules 97 and 101.

Findings

10. Having considered the rival submissions and perused the record, I find no merit in the present revision petition.

11. As regards the application under Section 48 CPC, the executing court has rightly held it to be not maintainable. Section 48 CPC, which earlier provided for a bar of limitation for execution after 12 years, was repealed by Section 28 of the Limitation Act, 1963 w.e.f. 01.01.1964, and that section itself was repealed by the Repealing and Amending Act, 1974. Thus, the filing of an application under a provision that is no longer part of the statute book was wholly misconceived. The executing court committed no error in dismissing such an application summarily.

12. Turning to the application under Section 47 CPC and Order 21 Rules 97 and 101 CPC, it is settled law that the executing court cannot go behind the decree. The rights of the parties and their status as heirs of Sakina were directly in issue in the original suit of 2013. The trial court framed the necessary issues, evaluated the evidence, and decreed the suit in favour of the plaintiffs/respondents, holding them entitled to protection of possession as successors of Sakina. The appellate court and this High Court, while dismissing the Regular Second Appeal, affirmed those findings. Once the decree has attained finality, it is binding between the parties.



13. The plea of fraud raised by the petitioners was available to them during the trial and was in fact raised in objections during the first execution. Those objections were dismissed on 24.04.2025. Permitting the petitioners to raise the same plea again in a second execution would violate the principle of finality of litigation and is barred by res judicata under Section 11 CPC. The Supreme Court in case of *Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193* has consistently held that an Executing Court cannot go behind the decree and cannot reopen issues already adjudicated, except where the decree is a nullity for want of jurisdiction. In the present case, the decree is not without jurisdiction; it was passed by a competent court after trial and affirmed in appeal. Thus, the plea of fraud cannot be entertained at the stage of execution.

14. Further, Order 21 Rule 97 CPC enables a decree holder or purchaser in execution to approach the executing court in case of obstruction or resistance by any person. The judgment debtor cannot invoke Rule 97 to resist execution of a decree passed against him. Since Rule 101 empowers the court to decide questions arising out of proceedings under Rule 97, it has no application where the very foundation under Rule 97 is absent. The petitioners, being judgment debtors, have no locus under these provisions, and the executing court has rightly held their applications not maintainable.

15. As regards the prayer to stay the execution under Order 21 Rule 29 CPC on the ground that the petitioners have filed a separate suit to challenge the decree on allegations of fraud, the executing court has rightly declined to exercise such discretion. Rule 29 confers a limited power, which is discretionary and intended to prevent multiplicity where the same parties are litigating in two proceedings. It cannot be used by judgment debtors to stall execution of a decree



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already affirmed in appeal and second appeal. If the petitioners believe they have an independent cause of action, they are at liberty to pursue it in accordance with law, but the executing court cannot stay or nullify execution of a valid decree on such grounds.

16. In the impugned orders, the executing court has given cogent reasons for dismissing the applications. The findings are in consonance with law and do not disclose any perversity or jurisdictional error warranting interference under Article 227. This Court, while exercising supervisory jurisdiction, does not reappreciate evidence or sit as an appellate authority. The scope is confined to correcting jurisdictional errors and patent illegality, none of which is made out here.

Conclusion

17. Accordingly, I am of the considered view that both the applications filed by the petitioners have been rightly dismissed.

18. For the reasons stated above, the revision petition is devoid of merit and is hereby dismissed.

19. Pending application(s), if any, also stand disposed of.

September 12, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No