

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

Civil Revision No.3108 of 2016 (O&M)
Date of decision: September 23, 2016

Mohinder Kumar ...Petitioner

Versus

Narinder Kumar Malhotra & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ranjan Lakhanpal, Advocate for the petitioner.

Rajan Gupta, J.

Present revision petition is directed against the order dated 20.02.2016, passed by the trial court, whereby application filed by the petitioner/JD praying for dismissal of execution petition filed by respondent No.1, has been rejected.

Learned counsel for the petitioner has assailed the order. He has submitted that approach of the trial court is erroneous and against law. According to him, the court below has wrongly dismissed the application without appreciating the prayer thereof. He submits that the decree is declaratory in nature only specifying the shares of the respective parties and does not prescribe any mode of partition.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears that the respondent No.1/plaintiff filed a suit for possession by way of partition of his 1/6th share in SCF No.12, Sector

20-C, Chandigarh. Said suit was decreed on 24.09.2001, wherein it was ordered that property be partitioned, but since the actual partition of the same was not permissible, same be put to auction firstly among the co-owners and if same is not possible, then property be put to public auction and sale proceeds thereof be distributed in equal shares to all legal heirs of Ram Sarup Malhotra. Petitioner preferred appeal against the said judgment and decree, which was partly allowed by Addl. District Judge, Chandigarh on 12.09.2005, holding that the judgment and decree would only be treated as a preliminary decree, specifying the shares of the parties. Petitioner also preferred Regular Second Appeal No.2176 of 2007 against judgments and decrees passed by both the courts below. The Regular Second Appeal was partly allowed by this court and judgments and decrees of the courts below were modified to the extent that defendants No.3 and 4 were entitled to 1/6th share and defendants No.1 and 2 were entitled to 1/4th share. Thereafter, final decree was passed by Civil Judge (Jr. Divn.), Chandigarh on 2.8.2012, wherein it was ordered that shares, as mentioned in the preliminary decree, has attained finality. Appeal was filed against the final decree, which was dismissed by Addl. District Judge, Chandigarh on 24.08.2013 and the final decree was upheld. Execution of the decree was filed. However, instant application was filed by the petitioner for dismissing the execution on the ground that the final decree is not in conformity with the preliminary decree. Trial court dismissed the application by observing that none of the shareholders have any right to raise assertions at this stage, when entire process of auction has been finalized.

I am of the considered view that instant application has been filed by the petitioner just to delay the execution proceedings. So, I find no infirmity with the order. Revision petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

September 23, 2016
'Rajpal'

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