

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

Civil Revision No.7518 of 2016

Date of decision: November 09, 2016

Surinder Kumar

...Petitioner

Versus

Ranjit Rai

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Rohit Ahuja, Advocate for the petitioner.

Rajan Gupta, J.

Present revision petition is directed against the orders dated 3.5.2013 and 6.8.2016, passed by Addl. Civil Judge (Senior Division), Phagwara as well as Additional District Judge, Kapurthala respectively, whereby issue No.4 regarding construction of the house in dispute by the respondent/plaintiff, has been decided against the petitioner and parties were directed to suggest mode of partition.

Learned counsel for the petitioner has assailed the order. According to him, the orders passed by the courts below are totally illegal and against provisions of law. The trial court has misinterpreted the preliminary decree passed in the case. As per preliminary decree, only land underneath the house in dispute was ordered to be partitioned and share was determined and no superstructure standing thereon.

I have heard learned counsel for the petitioner and given

careful thought to the facts of the case.

It appears, respondent/plaintiff filed a suit for separate possession by way of partition of his 1/3rd share in the house measuring 08 Marlas, situated at Mohalla Rattanpura, Phagwara, on the ground that he is joint owner and in joint possession of the said house. It is further alleged that plaintiff contributed huge amount for renovation of the house, thus, he is joint owner in possession of the same. He also sought injunction restraining the defendant from removing the constructed portion of the suit property and not to change user of the same. After considering claim of both the parties, the trial court passed a preliminary decree on 18.01.2005 to the effect that plaintiff is entitled to partition to the extent of 1/3rd share and the fact whether building over the property was constructed by the defendant exclusively or from the joint earning of the parties, would be adjudicated upon at the time of preparation of final decree. Appeal filed against the same was also dismissed. The trial court taking into consideration the evidence led by the parties, had observed that both the parties had contributed equally towards construction of the house. Therefore, the trial court decided issue regarding construction of the house against the petitioner. Aggrieved, petitioner filed appeal, which has also been dismissed by Additional District Judge, Kapurthala on 06.08.2016. Thereafter, petitioner filed the instant revision petition.

I find no legal infirmity with the orders passed by both the courts below. The petitioner has not been able to show that he was having sufficient money, as RW1 Madan Lal had stated that petitioner was working at a tea shop. Thus, his plea that he had spent Rs.1,50,000/-

on construction of the house, is not tenable. Therefore, the trial court has rightly observed that both the parties had contributed equally towards the construction of the house. I find no merit in this revision petition. Same being without any merit, is hereby dismissed.

(RAJAN GUPTA)
JUDGE

November 09, 2016
'Rajpal'

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