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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 289 of 2016 (O/M)

Date of decision : 24.1.2018

Prem Kumar

..... Petitioner

Versus

Rekha Sharma and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.B. Raheja, Advocate, for petitioner.

Mr. Binderjit Singh, Advocate, for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 2.12.2015 (Annexure-P-8), passed by learned Civil Judge (Senior Division), Mansa, vide which auction of Malba was ordered, which was in custody of Gurdeep Singh, for which the dates have been fixed. Further cost of removal of Malba was mentioned in order.

At the time of arguments, the learned counsel for petitioner has pressed instant revision only on the point of cost, assessed for removal of Malba. Second plea raised is that some of Malba has been stolen by the Local Commissioner.

It comes out that preliminary decree was passed on 31.8.1999 (Annexure-P-2) by learned Civil Judge (Senior Division), Mansa, vide which firm M/s Ram Nath Prem Kumar Mansa Mandi was dissolved with

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effect from 6.8.1988 with the death of Surjit Devi, partner of firm, and rendition of account of said firm with effect from 6.8.1988 was ordered. It also comes out that in the subsequent auction proceedings, several rounds of litigation started. It came out that said firm had a cinema hall with super structure and it was decided to liquidate the said assets. It also comes out that in the suit, the counter claim of defendants No. 1 to 3 for partition of property was dismissed. Now, the net result is that the preliminary decree was only for rendition of accounts. It comes out that during the execution proceedings the Court decided to liquidate the assets of firm and then distributed the same according to the share. A cinema hall was in existence and it was ordered to be demolished and sold. Present petitioner undertook to remove the Malba. It comes out that in the earlier round of litigation, it was ordered by learned Civil Judge (Senior Division) that respondent No. 3 will remove the construction and lift the Malba and that if he does not do so within fifteen days, it will be open to the applicant to apply for a local commissioner for getting the building demolished and removal of articles therefrom. It comes out that the Malba of cinema hall was purchased by respondent No. 3 for Rs. 1,45,000/-. It is apparent that said Malba was not removed and ultimately demolished by appointing a local commissioner.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

Before this Court, revision has been pressed only on two points i.e. (i) that part of Malba has been removed by the local commissioner and (ii) that excessive costs of removal of Malba i.e. Rs. 2,46,090/- plus Rs. 10000/-, fee of local commissioner, have been assessed which is exorbitant.

Respondent No. 3-petitioner has placed on file some

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photographs to support his claim that some part of Malba has been removed by local commissioner.

It comes out that the Court had already fixed the dates for auction of Malba, which is in custody of Gurdeep Singh, Superdar. It being so, present revision is partly allowed and is disposed of with a direction that let Malba be auctioned by the Executing Court and proceeds thereof be deposited in the Court. Further, the trial Court shall examine the claim of respondent No. 3-petitioner that part of Malba was stolen by local commissioner by holding an inquiry. Further, the Executing Court shall examine the bills produced regarding costs of removal of Malba and see that only reasonable costs for removal of Malba, which appears to be exorbitant, are allowed, which are to be adjusted from amount of Rs. 1,45,000/-, already deposited by respondent No. 3-petitioner before the Executing Court plus the earning from the sale of Malba. Further, if it is held that some Malba has been removed by local commissioner, the costs of said Malba be also assessed and same can be recovered in accordance with law after hearing the local commissioner and same also be distributed as per share in preliminary decree.

(KULDIP SINGH)
JUDGE

24.1.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No