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

CR-2333-2016 (O&M)

Date of decision : 15.01.2019

Krishna Rani Dutta and others

... Petitioners

Versus

Subhash Chand Dutta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Basatia, Advocate
for the petitioners.

Mr. Ankit Chowdhri, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

CM-9536-CII-2017

For the reasons stated in the application, Annexures R1 to R-10
are taken on record, subject to all just exceptions.

CM stands disposed of.

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The present revision petition is directed against the order dated
28.05.2015, whereby the trial Court, while drawing final decree in
pursuance to the preliminary decree dated 03.07.2012, after receiving the
report of the local commissioner and by noticing the provisions of Section 2
of the Partition Act, 1893 (in short 'the 1893 Act') has issued the following
directions:-

"8. In these circumstances, I order as follow:-

*(i) Firstly fixation of present market value of the property from
the concerned District Collector.*

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- (ii) The report of District Collector shall be determined.*
- (iii) In finalizing the fixed price, opportunity shall be given to all the sharers.*
- (iv) After fixation of price as above, the court will fix a date of sale, all the sharers to participate in the sale.*
- (v) This sale shall be only among the co-sharers. The sharers may either individually or collectively bid at the auction.*
- (vi) The highest bid shall be accepted and the sale shall be concluded.*
- (vii) If no sharer is coming forward to purchase the property, thereafter, a fresh sale date shall be fixed giving wide publicity inviting persons to participate in the sale.*
- (viii) In the second sale, the sharers can also participate but not as sharers but as third parties and now no preferential right shall be available to them.*
- (ix) In the second sale, the highest bidder shall be accepted and the sale shall be concluded.*
- (x) The sale proceeds shall be distributed among the sharers as per their share."*

Learned counsel for the petitioners-defendants submitted that the respondents-plaintiffs have not chosen to come forward to bring the buyer as the petitioners have no objection, though at one point of time, when the matter was sent to the Mediation and Conciliation Centre of this Court, there was some compromise.

Learned counsel for the respondents-plaintiffs submitted that it is an attempt to delay the adjudication of the preparation of the final decree. In this regard, he has drawn the attention of this Court to the orders dated 04.12.2017 and 25.04.2018 passed by this Court, to contend that as per the provisions of Section 3 and 4 of the 1893 Act, co-sharer had a potential right to purchase the share of other co-sharer and had given the rate, as per

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the collector rate, but the petitioners are still pressing for the present revision petition, thus, urges this Court for dismissal of the present petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the order dated 25.04.2018 passed by this Court, which reads as under:-

"The learned counsel for respondents states that they could not find the buyer.

The learned counsel for petitioners seeks more time to find out the buyer.

The learned counsel for respondents states that they are ready to buy the property.

In these circumstances, parties can find out a buyer and petitioners can also consider the offer of respondent to buy the property at the rate of ₹44,33,333/- for 1/6th share of petitioners, if buyer at higher price is not found.

List on 27.7.2018."

The order of the trial Court, extracted above, reveals that the objection of both the parties viz-a-viz the report of the Local Commissioner was rejected and had passed the order in terms of the provisions of Section 2 of the 1893 Act, but remained oblivious of the provisions of Sections 3 and 4 of the 1893 Act.

It would be necessary to extract the provisions of Sections 3 and 4 of the 1893 Act, 1893, which reads as under:-

"Section 3. Procedure when sharer undertakes to buy.—

(1) If, in any case in which the court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of

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the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Section 4 Partition suit by transferee of share in dwelling-house.—

(1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

On plain and simple reading of the order and the provisions, I am of the view that the offer, indicated above, is as per the report of the Collector (Annexure R-10), much less, in terms of the provisions of Section

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3 and 4 of the 1893 Act, therefore, the impugned order, is required to be modified to the aforesaid extent.

Let this exercise be done within a period of 45 days from the date of receipt of the certified copy of this order.

An amount of ₹25,000/- deposited in pursuance to the order dated 07.04.2016 is ordered to be returned to the petitioner against the valid receipt.

With the aforesaid observations, the present revision petition stands disposed of.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**