

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

Sr. No.205

**CR No.4013 of 2018
Date of decision: 25.11.2019**

Satbeer

....Petitioner

versus

Dharambeer

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sanjay Mittal, Advocate
for the petitioner.

Mr. Bhuvnesh Lakhera, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 01.05.2018 passed by the Judicial Magistrate, Ist Class, Jhajjar (for short – the Trial Court) dismissing an application filed by the petitioner under Section 4(1) of the Partition Act, 1893 (for short – the Act).

The respondent filed a suit seeking therein possession of 1/4th share by way of partition of the property detailed and described in the plaint (for short – the suit property). On being put to notice, the petitioner, who was the sole defendant, appeared before the Trial Court and contested the respondent's suit. After considering the respective stands taken by the parties as also the evidence led by them, on 27.07.2016, the Trial Court passed a preliminary decree. However, before the final decree could be passed, the petitioner filed an application under Section 4(1) of the Act

seeking therein issuance of a direction by the Trial Court to the respondent to sell his share in favour of the petitioner on the ground that on the suit property there was a dwelling-house which was earlier owned by the brother of the petitioner, who had sold his share to the respondent, who was a stranger to the joint Hindu property earlier owned by the petitioner and his brother. The application of the petitioner was dismissed by the Trial Court giving rise to the present proceedings.

Learned counsel for the parties have been heard.

Section 4(1) of the Act reads as under:-

“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.”

As per afore-quoted provision, where a share of a dwelling-house belonging to an undivided family had been transferred to a person who was not a member of such family and such transferee sues for partition, the Court shall, if any other member of the family being a share-holder 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.

The legislative intent behind the afore-quoted Section is clear

which is that if a share in a dwelling house belonging to an undivided family is transferred to a stranger the family which owned the dwelling house should have the first right over the same as opposed to entry of a stranger in the same.

Therefore, the first ingredient for applicability of Section 4 of the Act is that the suit property should be a dwelling-house. As per the report of the Local Commissioner dated 31.10.2014 on the basis of which the aforesaid preliminary decree was passed, which has remained unassailed by the petitioner, on the suit property there was one newly constructed room, boundary wall and a water tank as also other two rooms which were constructed about 10-15 years ago. There is no kitchen or bathroom. Thus, no dwelling-house is existing on the suit property. Resultantly, Section 4(1) of the Act would have no application to the facts of the present case.

In view of the above, there is no merit in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 25, 2019

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No