

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 4658 of 2018

Date of decision:6.9.2019

PUSHPINDER KAUR AND ANR

.....petitioners

Versus

PREET NARAIN

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Rohit Samhotra, Advocate,
for the petitioners.

Dr.Puneet Kaur Sekhon, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(oral)

Petitioners have preferred this revision petition against the order dated 6.7.2018 passed by the Civil Judge (Jr.Divn.), Chandigarh, vide which joint property was ordered to be auctioned. Schedule of proceedings for notice, auction, sale and report was also given.

Learned counsel for the petitioners submits that the application under Order 1 Rule 10 CPC was not objected by the plaintiff/ respondent and the same was allowed on 18.4.2018 by the trial Court. Another application was filed by the plaintiff on the basis of self assessment made by him in respect of market value of the house in question. The assessment was made to the tune of Rs.28 crores. Plaintiff pleaded that he was not

interested in buying $2/3^{\text{rd}}$ share of the defendants and if defendants are interested in buying the share of the plaintiff, they can come forward. The plaintiff further pleaded that the last alternative is to put the property to auction and divide the sale proceeds between the parties according to their share as per Scheme of Partition Act of 1893. The case was fixed for filing reply to the aforesaid application on the basis of market value assessed by the plaintiff and his inability to purchase the share of the petitioners and for putting the property to auction.

Learned counsel further contends that in view of Sections 2 and 3 of the Partition Act, the Court can direct the auction at the instance of the owner, who is having 50% or more than 50% share in the property. Evidently, the plaintiff is having only $1/3^{\text{rd}}$ share. Whether putting the property to auction is permissible or not in such a scenario would be debatable for which court would be obligated to decide the case only after receiving the reply on behalf of the petitioners.

To this extent, learned counsel for the plaintiff/respondent has no plausible defence. Petitioners would be well within their right to press for valuation to be done by the Court under Section 3 in accordance with law.

At this stage, without making any observation on the merits of the case, this revision petition can be disposed of by setting aside the impugned order and by directing the trial Court

to give reasonable opportunity to file reply to the application filed by the plaintiff.

The trial Court shall make every endeavour to decide the suit at the earliest. Any observation made by this Court may not be construed to be the final opinion on the merits of the case.

Petition stands disposed of with the aforesaid observations. Normal consequences to follow.

September 06, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No