

CR-5446-2018 (O&M)

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

CR-5446-2018 (O&M)

Date of decision : 22.05.2019

Gurdial Singh (deceased) through LRs

... Petitioner

Versus

Arjun Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tarunveer Vashist, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the petitioner-decree holder, in execution of the judgment and decree dated 03.09.1982, has been given symbolic possession.

Mr. Tarunveer Vashist, learned counsel appearing on behalf of the petitioner submitted that the petitioner-plaintiff instituted the suit on 10.06.1981 for possession by way of pre-emption challenging the sale deed dated 11.06.1980, in respect of the land, which, according to the averments, was of a co-sharer. The trial Court, vide judgment and decree dated 03.09.1982, in the relief clause, has observed as under:-

"15. In view of my findings on various issues referred to above, the suit of the plaintiff is decreed with costs to the effect that he is entitled to possession in respect of land mentioned in the sale deed Ex.P1 on the payment of ₹1,08,500/- (excluding 1/5th pre-emption already deposited by him) on or before 2.11.1982 failing which his suit shall deem to have been dismissed with costs. Decree sheet be prepared accordingly and the file be

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consigned to the record room. The defendants shall withdraw the 1/5 pre-emption amount deposited by the plaintiff."

It was next contended that since the possession was with the defendants, the execution application was filed, but the trial Court has confined it to the symbolic possession with a liberty to exercise right in accordance with law. The impugned order, under challenge, is not in accordance with the decree, therefore, there is abdication.

I am afraid the aforementioned argument is not sustainable, for, the decree, aforementioned, was not in accordance with law. In a suit for partition, particularly of a co-sharer, even the sale deed is of specific khasra number, it would be a sale of a share of the co-sharer. Once the sale deed had been set aside, the status of the petitioner-plaintiff as a co-sharer restored. Neither any copy of the mutation nor the khasra girdawaris placed on record to establish the possession of the vendee. Assuming for an argument sake, that the possession is of a vendee, the plaintiff-petitioner is not precluded to seek the partition of the property and take the possession, as and when final decree is passed.

Keeping in view the aforementioned facts, the impugned order, under challenge, cannot be said to be fallacious and inform, much less, without jurisdiction. No ground is made out for interference. Resultantly, the present revision petition is dismissed.

22.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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