

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.6437 of 2017 (O&M)

Date of Decision: April 03, 2019

Joginder Mohan (deceased) through L.R.

...Petitioner

Versus

Romesh Kumar Gupta & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. Amit Chaudhary, Advocate,
for respondent Nos.1, 3 & 4.

Mr. Gursimranjit Singh, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

In pursuance to the order dated 07.02.2019, learned counsel for the petitioner has filed affidavit of Vishal Gupta, legal representative of the petitioner, today in Court which is taken on record. Copy given to the counsel opposite.

CM No.7695-CII of 2019

Affidavit of respondent No.1 as Annexure R-1/5 is taken on record.

CM stands disposed of.

CR No.6437 of 2017

The present revision petition is directed against the impugned order dated 12.05.2017 (Annexure P-1), whereby the trial/Executing Court

while entertaining the application for preparation of final decree of separate possession to the extent of 1/3rd share in respect of a residential house bearing property No.B-XIX-795 measuring 381 sq. yards, situated at Patel Nagar, Civil Lines, Ludhiana, rejected the objection of the petitioner-judgment debtor No.1 on the premise that the aforementioned house is not partible.

Mr. Vikas Mohan Gupta, learned counsel for the petitioner submitted that the genesis of the impugned order is based upon the statement of the petitioner in previous proceedings, wherein he has taken the plea of property to be impartible. In fact, at that time, three parties were asserting right, but it is only three storey house and can easily be partitioned.

This Court on 21.09.2017 passed the following order:-

*“Learned counsel for the petitioner has referred to the judgment passed by this Court in **Bhupinder Kishore Vs. Fateh Singh Yadav and others**, 2015 (2) PLR 578, to contend that in the case of preparation of final decree of partition by metes and bounds by appointment of Local Commissioner, the objector had to be given a right to cross-examine him and lead evidence in contravention to the report of the Local Commissioner.*

Notice of motion for 19.12.2017.

In the meantime, operation of the impugned order dated 12.05.2017 (Annexure P-1) shall remain stayed.”

Learned counsel for the petitioner has filed the affidavit of his client along with site plans to contend that the property can be partible by showing two portions in green and yellow colours on ground and first floor to be given to one person and the two floors to other person and the portion shown in blue colour to the third person on the ground floor, first floor and

second floor. The site plans aforementioned, *prima-facie*, cannot be construed as a suggestion for partition as it will not be construed to be a complete separate portion, which is the pith and substance of the preliminary decree.

Learned counsel for the respondents do not deny the selling of their share to the plaintiff or purchasing his share in terms of the provisions of Section 3 of the Partition Act.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the arguments of the learned counsel for the petitioner as the purpose of preliminary decree and asserting possession cannot be implemented while drawing the final decree owing to the facts explained above. The Legislature in its wisdom has protected the interest of the co-sharers by incorporating specific provisions in the Partition Act (for short, 'the Act'). Section 3 empowers the co-sharer to buy each other share after the assessment of valuation of the share by the Court. It is a matter of record that none of the share holders had transferred their share to the third party and, therefore, in such circumstances, provisions of Section 4 would not come into play. Section 2 empowers the Court to order the sale instead of division of the property in partitions suits. The same read thus:-

“Power to court to order sale instead of division in partition suits.—Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and

distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.”

Keeping in view such enormous situation, it would be in the fitness of things to resort to the provisions aforementioned. The impugned order cannot be said to be suffering from illegality or infirmity. Resultantly, the revision petition stands dismissed.

However, Liberty is granted to the parties to move an appropriate application in terms of the observations and the provisions of the Act for vindication of their grievances.

This Court is sanguine of the fact that the trial Court shall expedite the implementation of the order which is of 2017.

Revision petition stands disposed of.

April 03, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No