

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

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CR No.6921 of 2016 (O&M)

Date of Decision : 19.09.2019

Bishamber Singh

....Petitioner

v/s

Madhu Bala

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. S.S. Grewal, Advocate for the petitioner.
Mr. Vishal Munjal, Advocate for the respondent.

B.S. Walia, J. (Oral)

[1] Prayer in the revision petition is for setting aside Order (Annexure P-4), dated 01.10.2016, whereby objections filed in execution proceedings by the petitioner were dismissed by the learned trial Court.

[2] Brief facts of the case, leading to the filing of the revision petition are that the civil suit filed by the respondent-plaintiff for possession by way of specific performance of agreement to sell dated 03.04.2007 of land measuring 2-K out of 56-K 13-M, as well as for permanent injunction restraining the petitioner-defendant from further alienating the suit land was decreed in her favour by the learned Additional Civil Judge (Senior Division), Pathankot vide Order dated 05.08.2009 and the petitioner-defendant was directed to execute sale deed qua the suit land in favour of the respondent-plaintiff within 60 days.

[3] The petitioner-defendant filed an appeal against the above said orders but the same was dismissed by the learned Additional Sessions Judge,

defendant was also dismissed by Hon'ble the High Court vide judgment (Annexure P-1) dated 05.08.2009. Respondent-plaintiff, on the basis of decree in her favour, filed execution petition and got the sale deed of the land in dispute executed in her favour through the learned Executing Court besides got mutation sanctioned in her favour. Thereafter, the respondent-plaintiff filed an application for partition of land measuring 9-K owned by the petitioner-defendant before the learned AC (Ist Grade), Pathankot. The same was allowed by the learned AC (Ist Grade), Pathankot and *Sanad Taksim* was issued vide Order dated 27.01.2016.

[4] Revision petition was filed by the petitioner-defendant before the Financial Commissioner (Revenue), Punjab, against Order dated 17.12.2015 and 27.01.2016, passed by the learned AC (Ist Grade), Pathankot. Initially, order of status quo was passed by the learned Financial Commissioner (Revenue), Punjab on 29.09.2016. In the meantime, the respondent-plaintiff filed an execution petition in the Court of the learned ACJ (Senior Division), Pathankot, for getting possession of the land in dispute on the basis of partition order dated 17.12.2015. The petitioner-defendant filed objections dated 22.09.2016 in the execution proceedings filed by the respondent-plaintiff. However, the same were dismissed vide order Annexure P-4 dated 01.10.2016. Thereafter, warrants of possession were issued by the learned ACJ (Senior Division), Pathankot besides, Police help for execution of the same was also allowed.

[5] Sole argument of learned counsel for the petitioner is that once order of partition was passed by the learned AC (Ist Grade), Pathankot on the application moved by the respondent-plaintiff for partition of land

said order could have been ordered only by the Revenue Court and not the Civil Court.

[6] While issuing notice of motion for 02.02.2017, delivery of actual possession of land in pursuance of decree and execution were ordered to be kept in abeyance. However, delivery of symbolic possession to the respondent-plaintiff on the basis of decree was allowed.

[7] Challenge by the petitioner – defendant to order dated 17.12.2015 by the petitioner-defendant by way of revision before the learned Financial Commissioner, initially resulted in grant of order of *status quo* Annexure P-9 on 29.09.2016 but eventually the revision petition filed by the petitioner-defendant was dismissed by the Financial Commissioner on 20.12.2017. An application is stated to have been moved by the petitioner-defendant for restoration of the revision petition dismissed in default vide order dated 20.12.2017. However, it is admitted that till date the same has not been restored.

[8] Learned counsel for the respondent-plaintiff states that, no notice has been received by the respondent-plaintiff of application if any moved for restoration of ROR No.760 of 2016 dismissed in default vide order dated 20.12.2017 by the learned Financial Commissioner, therefore, for all intents and purposes, order dated 17.12.2015, passed by the learned AC (Ist Grade), Pathankot in partition proceedings initiated by the respondent-plaintiff has attained finality. Learned counsel for the respondent states that in the circumstances he has no objection if the revision petition is allowed and the impugned order is set aside while granting liberty to the respondent-plaintiff to move an appropriate application before the revenue

by the Asstt. Collector First Grade, Pathankot. In response thereto, learned counsel for the petitioner states that he has no objection to the aforementioned stand of learned counsel for the respondent-plaintiff.

[9] In the light of the position as noted above, the revision petition is allowed and the impugned order is set aside. Liberty is granted to the respondent-plaintiff to move an appropriate application before the revenue authorities for grant of possession in terms of Order dated 17.12.2015, passed by the learned AC (Ist Grade), Pathankot, in accordance with law. In case, any such application is moved by the respondent-plaintiff, the same would be considered and decided by the revenue authorities, in accordance with law, as expeditiously as possible, preferably within a period of 04 weeks from the date of submission of application along with certified copy of the order.

[10] Revision petition allowed as above.

(B.S. Walia)
Judge

September 19, 2019
'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No