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

**Civil Revision No.6532 of 2018 (O&M)
Date of Decision: 13.11.2019**

MUKHTIAR SINGH

.....Petitioner

Vs

SURINDER LAL AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manish Kumar Singla, Advocate with
Ms. Shikha Singh, Advocate
for the petitioner.

Mr. Ashok Bhardwaj, Advocate
for respondents No.1 to 5.

RAJ MOHAN SINGH, J. (Oral)

[1]. This revision petition has been preferred against the order dated 07.08.2018 passed by the Additional Civil Judge (Sr. Divn.) Sangrur.

[2]. At the very outset, learned counsel for the petitioner submitted that respondents No.1 to 5 are the only contesting respondents, who are being represented by Sh. Ashok Bhardwaj, Advocate.

[3]. Learned counsel appearing on behalf of respondents No.1 to 5 admitted the aforesaid position.

[4]. Perusal of the record would show that factum of

existence of *kothi* came to be noticed by the local Commissioner in his report dated 09.08.2016. The aforesaid report was prepared at the back of the petitioner. Necessary clarification was sought by the respondents against the aforesaid report dated 09.08.2016. In that context, notice was issued to the petitioner and petitioner came to know about the said report. Thereafter objections were filed by the petitioner on the ground that preliminary decree stood vitiated on account of disclosure of aforesaid fact by the local Commissioner. Triable issues could have been adjudicated upon by the executing Court after framing proper issues.

[5]. Petitioner is a vendee from a co-sharer. The said fact was admitted by the respondents in the proceedings arising out of Order 39 Rule 2-A CPC.

[6]. Whether the vendee sold the aforesaid area in excess of her entitlement is the core issue which is always subject to partition, for which no suit for partition has been filed for the entire land. No finding regarding entitlement of the vendor of the petitioner has been recorded by the executing Court. The case of the petitioner falls under Order 21 Rule 97 CPC as he has not been dispossessed so far. Rule 103 of Order 21 CPC is not attracted as the same is applicable, when adjudication is made under Rules 98 and 100 of Order 21 CPC.

[7]. At this stage, without making any opinion on the merits of the case, it would be just and appropriate to direct the executing Court to revisit the impugned order dated 07.08.2018 and pass appropriate order afresh after adverting to the facts on record by framing proper issues.

[8]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 07.08.2018 passed by the Additional Civil Judge (Sr. Divn.) Sangrur and remand this case back to the executing Court to pass a fresh order on merits after framing necessary issues. The executing Court shall make every endeavour to decide the case at the earliest. Revision petition stands disposed of.

[9]. Both the parties are directed to appear before the executing Court on 27.11.2019.

November 13, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No