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

CR-2936-2019 (O&M)

Date of decision : 24.05.2019

Asarfi (since deceased) through LRs

... Petitioner

Versus

Ram Lal (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Som Nath Saini, Advocate
for the respondent.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 09.09.2017, whereby the objection filed by the respondent against the report of local commissioner has been allowed.

This Court, while issuing notice of motion, had passed the following order:-

"CM-10068-CII-2019

For the reasons stated in the application, which is supported by an affidavit, the legal representatives of the petitioner, are ordered to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

MAIN CASE

Inter alia contends that in the present case, the preliminary decree was passed on 17.08.2006, which resulted into, passing of the final decree, by rejecting the objection of

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the decree-holder/plaintiff-respondent, dated 21.03.2013. The aforementioned order was assailed in appeal, which was set aside, vide order dated 21.05.2014, with a objection to decide the objections afresh. The said order was assailed before this Court, vide CR No.2230 of 2015, which was dismissed by this Court, on 03.02.2016. Decree-holder filed the objection, which was dismissed and the trial Court straight away issued the warrant of possession without drawing the final decree. The petitioner-defendant, under wrong advice, preferred an appeal before the lower Appellate Court, which was dismissed on 14.03.2018 and in these circumstances, the revision petition bearing No.2355 of 2018, was filed, wherein this Court found that the appeal was not maintainable, but did not, as noticed above, take away the right to challenge the order dated 09.09.2017. Vide Annexure P-10, it has been pointed out that the petitioner/judgment-debtor has 3/4th share, viz-a-viz the plaintiff 1/4th share and the site plan prepared by the Local Commissioner is in tandem with the site plan (Annexure P-10). However, on oral request of the plaintiff, the trial Court while holding that he would get a passage from HUDA, which is not permissible to change the sites, accepted the objection, by rejecting the site plan of the Local Commissioner.

Notice of motion.

Mr. Som Nath Saini, Advocate, who is present in Court, accepts notice on behalf of the respondent and prays for time to argue the matter.

Adjourned to 24.05.2019.

In the meantime, there shall be interim stay qua warrant of possession."

Mr. Dhiman, learned counsel appearing on behalf of the petitioner submitted that in pursuance to the preliminary decree, the local commissioner, in its report dated 12.01.2012, had given the site plan showing on the right hand side i.e. towards eastern side, the petitioner

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having 1/3th share, whereas that of the decree holder, 1/4th, towards western side. The aforementioned order was objected to and again Local Commissioner was appointed, who gave a different site plan, in its report dated 20.03.2012, whereby the plot of the decree-holder has been kept towards the eastern side, whereas the petitioner, towards western side. On oral request of the plaintiff, the trial Court erroneously held that he would get a passage from HUDA, which is not permissible to change the sites, committed illegality in accepting the objection by rejecting the site plan of the Local Commissioner. The Court below could also not issue warrant of possession straight away, instead of passing the final decree.

Per contra, Mr. Saini, learned counsel appearing on behalf of the respondent submitted that the entire area, on the western side, is surrounding by the land of the petitioner-judgment debtor and the area given by the Local Commissioner, in the first report, the respondent would have become the stranger/alien and they would not have any passage. There is every possibility of creating hindrances and impediments could not be ruled out.

During the course of the hearing, Mr. Saini, has shown the site plan prepared at the time of drawing the final decree and after the acceptance of the objections of the decree holder.

Mr. Dhiman, has also attempted to demonstrate by annexing the site plan, Annexure P-10, to allege that since the shareholding of the petitioner-judgment debtor, is 3/4th, the area given on the eastern side, on the statement of decree holder that he would get the passage from HUDA, is neither here nor there. It is not an appropriate determination.

I have heard learned counsel for the parties, appraised the paper

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book and of the view that there is no force and merit in the submissions of Mr. Dhiman, for, the factum of other plots surrounding on the western side of the area marked by the Local Commissioner owned by the petitioner-judgment debtor had not been denied. In such circumstances, it is equal identification of the determination of the shares as on the eastern side, there is a vacant land of HUDA and the decree-holder can seek the possession, for, he would not have any threat of hindrances and impediments at the hands of the petitioner-judgment debtor. It appears to be settlement of ego, nothing beyond.

Keeping in view the aforementioned facts, the impugned order, under challenge, cannot be said to be suffering from illegality and perversity, much less, no ground is made out for interference. The present revision petition stands dismissed.

24.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**