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

**Civil Revision No.5169 of 2019 (O&M)
Date of Decision: 28.08.2019**

Dharam Pal

.....Petitioner

Vs

Sunhera and others

....Respondents

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

Present:Mr. Ajay Kumar Kansal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has ventured to file the present revision against the order dated 25.04.2019 passed by the Civil Judge (Sr. Divn.) Jind vide which application for restoration of the application for preparation of final decree was allowed.

[2]. Perusal of the record would show that in a suit for partition of the house, a preliminary decree was drawn. Counter claim set up by the defendant was also allowed. An application was filed by the plaintiff(s)/petitioner himself for drawing final decree. The said application was dismissed for non-prosecution vide order dated 24.10.2016 and the file was consigned to record. Thereafter, an application for restoration was filed by the

defendant and the same was allowed vide the impugned order.

[3]. Learned counsel for the petitioner submitted that even though the application for drawing of final decree was filed by the plaintiffs, the application for restoration of the same at the instance of the defendant was not maintainable as at a later stage, the petitioner was not interested in seeking drawl of final decree as the report of Local Commissioner has already gone against him and his objections have also been dismissed.

[4]. I have considered the submissions made by learned counsel for the petitioner.

[5]. It can be noticed from the record that the suit was filed for partition of suit land, where both the parties are co-sharers. In a suit for partition, every plaintiff would be deemed be in possession and *vice versa* and each of the co-sharers has to get his/her share in the partition. The suit for partition was decreed on 10.03.2011 and a preliminary decree was passed. The application for preparation of final decree was moved on 23.03.2011 by the plaintiff(s). The preliminary decree shows that the counter claim of the defendant was also decreed along with the suit of the plaintiffs. Counter claimant is also entitled to get separate possession of the suit property to the extent of his share.

[6]. In view of aforesaid factual position, it does not lie in

the mouth of the plaintiffs to oppose restoration of the application for preparation of final decree. This revision petition is accordingly dismissed. However, petitioner would be at liberty to avail his legal remedies in accordance with law.

August 28, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No