

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.58 of 2020
Date of Decision:13.1.2020

Mohinder Singh

...Petitioner

Versus

Avtar Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rajesh Kumar Sharma, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition filed under Article 227 of the Constitution of India is for setting aside the impugned order dated 7.11.2019 (Annex.P1) passed by the Civil Judge (Jr.Division), Ludhiana, whereby the objections filed by the judgement debtors have been dismissed and warrants of sale has been issued.

2. Heard. Read the order and perused the file.

3. I have no option but to dismiss the suit for partition culminating in a decree defining the shares of the co-owners. The reasons which persuade me to do so are recorded.

4. The petitioners are four brothers and a sister. The mother died before the litigation started. The decree has been confirmed up to this Court in a Regular Second Appeal. The property is a residential house which the court of first instance has found difficult to divide into five proportionate shares. Neither the petitioner or anyone else has bought out the shares of others for exclusive ownership of the property by offer to buy each other

out. In these circumstances, the trial Court has ordered the execution of partition decree the auctioning the suit property/residential house so that the sale proceeds can be applied to distribute among the co-sharers in the proportion determined in the decree. The auction is fixed for tomorrow, that is, 14.1.2020.

5. The petitioner claims to be in long settled possession of a large portion of the house since the last 20 years during which time his brothers were away to work at different places till such time as the suit for partition was filed. The suit was decreed on 7.9.2006. The first appeal was dismissed on 24.12.2009 and the regular second appeal was dismissed in the year 2016.

6. The petitioner has approached this Court in the present petition complaining that the order of putting the property to sale by auction in execution of the judgement of final decree dated 8.12.2016 deserves to be set aside as the respondents have not affixed the appropriate court fee on the plaint in the suit decided in 2006. This is an ingenious way of going behind the decree which cannot be permitted at this stage.

7. The petitioner has to be confined to his share and if he has been in excess of his share his rights must be aligned to his inheritance. The Court fee in a suit for partition is fixed court fee and not ad valorem as is argued by learned counsel for the petitioner. This argument is noticed and rejected. I therefore have no reason to entertain this petition and the same is accordingly dismissed in limine as it is devoid of merit.

January 13, 2020

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Whether speaking/reasoned

Whether reportable-

(RAJIV NARAIN RAINA)
JUDGE

Yes.

Yes/No