

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

206

CR-3457-2019(O&M)

Date of Decision : 23.11.2020

Promilla Kakar and others

... Petitioners

Versus

Rishi Karan Kakar

... Respondent

CORAM:- HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present:- Mr.Vikas Sharma, Advocate
for the petitioners.

Mrs. Ritam Aggarwal, Advocate
for the respondent.

GIRISH AGNIHOTRI, J.(ORAL)

Promilla Kakar stated to be aged 73 years along with two others have jointly filed the present civil revision petition *inter alia* with the prayer for setting aside the order dated 17.05.2019 (Annexure P-1) passed by the learned Civil Judge, (Junior Division), Chandigarh vide which the learned Court dismissed the application dated 03.05.2019 (Annexure P-2) filed by the petitioners for stay of the execution proceedings and issued “Warrants of Possession” against the judgment debtors/petitioners without any consideration to the compromise deed dated 17.04.2014 (Annexure P-3) affected between the parties as well as the facts and circumstances of the case, which is illegal and arbitrary.

Records of the case show that vide order dated 23.05.2019, this Court passed the following order :-

“Learned counsel for the petitioners contends that

even if the ex parte judgment dated 22.11.2018 was a remand order, the executing Court ought to have perused the compromise in its right perspective as share of only 40% was allotted to the first party/respondent as per para No.2 of the compromise. The impugned order is the result of misreading of compromise.

Notice of motion for 30.09.2019.

Till the next date of hearing, operation of the impugned order shall remain stayed.”

CM Nos.23092, 23094 and 23095-CII of 2019 respectively have been filed by the respondent. In these applications, notice was issued on 13.11.2019. CM No.9962-CII of 2020 has been filed by the petitioners seeking permission to place on record certain photographs.

Learned counsel for the petitioners has submitted that petitioner No.1 is the mother of respondent and petitioners No.2 and 3 are the sisters of the respondent. During the pendency of civil dispute, compromise deed was entered into on 17.04.2014 wherein respondent was first party whereas the petitioners herein were second party. Para 2 of the said compromise deed is reproduced as under :-

“That the H.No.198 Sec. 16-A shall be divided in the share of 40% to first party and 60% to second party.

Further, first party shall have right to construct second floor for his own use and occupation. The second party shall give consent to get permission and maps authorised from concerned authorities.

The office in house shall be exclusively for the use and occupation of first party, While the

Munshi Room shall be used exclusively by the second party. Front lawn shall also be shared by both parties. A small pentary shall be got constructed with the office for first party by second party.

Rest of the house shall be used as per present situation. That is the first party entire first floor except. One room with Bathroom along with Temple Room and back terrace on first floor towards main road of 15/16 sector.”

Learned counsel for the petitioners then refers to order dated 23.10.2015 which was passed by Civil Judge (Junior Division), Chandigarh in the execution petition. As per the learned counsel for the petitioners, the respondent, however, was aggrieved of the said order and, therefore, filed appeal against the said order. This appeal was decided vide order dated 22.11.2018 passed by Additional District Judge, Chandigarh. Learned counsel for the petitioners then submits that application dated 18.02.2019 was filed under Order 9 Rule 13 CPC for setting aside the *exparte* order/judgment dated 22.11.2018. He submits that since this application has not been decided as evident from order dated 09.05.2019 (Annexure P-10), the present revision petition was filed.

Learned counsel for the respondent, on the other hand, submits that the house was, in fact, in the ownership of grandfather Mr. Banwari Lal. He had given 50% share to his son Bhupinder Kakar (father of respondent) and 50% share to Sarita Rani, the Bua of respondent. It is the case of the respondent that in fact after the death of father Sh. Bhupinder Kakar in 2006, if the share would have been divided in equal, he was entitled to 12.5% of 50% and also 50% of his Bua which comes to 62.5%. She submits

that be that as it may to settle the matter between the family, a compromise deed dated 17.04.2014 was effected between the parties.

The relevant extract of the compromise deed has already been extracted above. This Court has made efforts to understand the issue and both parties are agreeable, firstly on the fact that the compromise deed was actually entered into on 17.04.2014. It is also agreed that most of the clauses of para 2 have been honoured by the respective parties. However as per the petitioners the only issue that the respondent is agitating which is not acceptable to them is what has been recorded in the order dated 23.10.2015 i.e. as to whether respondent No.2 can not, in view of the compromise, claim possession on area which is between first floor and the ground floor i.e. space below 4/5 steps of the first floor. In simple words, learned counsel for the petitioners submits that the said area is, in fact, the area above the passage.

Learned counsel for the respondent on instructions from respondent submits that the compromise deed dated 17.04.2014 was executed. Secondly, she submits that the petitioners have firstly not given consent to get permission and maps authorised from concerned authorities. Secondly, she submits that a small pantry as mentioned in the compromise deed has not been constructed. She thirdly submits that the office room on the ground floor is too small and, therefore, he is entitled to the space between first floor and ground floor which is below 4/5 steps of the first floor. She, however, qualifies it by saying that it is actually first floor. She, lastly, submits that along with CM No.23095-CII of 2019, the order dated 21.05.2019 has also been appended whereby the Executing Court/trial Court has corrected the typographical mistake in the order dated 17.05.2019.

On the other hand, learned counsel for the petitioners submits that even this correction is not in accordance with law and in accordance with the compromise and therefore, cannot be relied upon.

On the asking of the Court, both the counsel informed that the next date in the Executing Court is 05.12.2020.

In peculiar facts and circumstances of the case, the present revision is disposed of with the following directions :-

- (i) The Executing Court in view of the stand taken by both the parties before this Court would give two opportunities each to both the parties to make their submissions on their interpretation of compromise deed in writing. Both the parties are free to support their submissions by any document.
- (ii) The Executing Court may appoint an expert (the expenses of which shall be borne by both the parties), preferably a technical expert including an architect, who may be given copies of respective submissions made by the parties regarding the compromise deed, a copy of the compromise deed and the original plans. The trial court may further issue such appropriate directions as it deems fit in addition to the above directions.
- (iii) Both counsel are also agreeable that one effort shall be made by both the parties to mediate and sit across the table to settle the dispute. Needless to mention that if this happens, the said decision so mutually taken can be brought to the notice to the Executing Court for further orders.

(iv)The decision based on the above and de hors the earlier order passed by the Executing Court or the Appellate Court, the Executing Court shall decide the matter afresh after granting both the sides two opportunities each to make their submissions after the receipt of the report of the expert.

(v)Till the aforesaid decision is taken, the status quo as on today and as directed by this Court dated 23.05.2019 shall continue. Let needful be done as expeditiously as possible, however, the Executing Court is directed to decide the whole issue preferably within six months.

No separate orders are required on Civil Misc. Applications.

Disposed of.

23.11.2020
anju

(GIRISH AGNIHOTRI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No