

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

208

CR No.1390 of 2020 (O&M)
DATE OF DECISION : 09th DECEMBER, 2021

Sudhir Kumar Sondhi

.... Petitioner

Versus

Ram Parkash Sondhi (deceased) through his LRs and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. H.K. Aurora, Advocate,
for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Mr. Saksham Mahajan, Advocates and
Ms. Rubani Attri, Advocate,
for respondent No.2.

Mr. Amit Singla, Advocate,
for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 18.11.2019 and 29.11.2019 (Annexures P-1 and P-2) passed by the Executing Court, Jalandhar.

The facts of the case, as has come up during the arguments of the case, are that a property was left by the mother of the petitioner, Smt. Kamal Sondhi, who died on 24.05.1990 in-testate. There were four successors, who were entitled to inherit the same in equal shares. The petitioner happens to be one of them, who is the son of Smt. Kamal

Sondhi. The other two sons are respondent Nos.2 and 3; and the fourth claimant was respondent No.1, Ram Parkash Sondhi, the husband of the deceased Smt. Kamal Sondhi. After the death of Kamal Sondhi, respondent Nos.1 to 3 filed a suit for possession by way of partition of the said property. The suit was decreed, vide judgment and decree dated 08.02.2011. However, the peculiar feature of this case is that the trial Court had not prepared any preliminary decree to determine the shares. Instead, before the preliminary decree could be passed, the parties entered into an agreement dated 11.06.2001 and placed the same on record before the trial Court as Ex.P-3. That compromise mentioned specified shares and also the specific portions, which were to be given to the respective parties. The map showing the specific portions of the respective parties was also placed on record before the trial Court as Ex.P-4. Not only the parties had entered into compromise, the parties had even appeared before the trial Court and had made their respective statements before the trial Court on 30.06.2001; accepting and ratifying the compromise placed on record before the trial Court. Accordingly, the trial Court passed the final decree itself; by partitioning the property by meats and bounds; and ordering giving possession of the specific portions to the parties, as was mentioned in the compromise and as was depicted in the site plan attached to the said compromise.

Feeling not satisfied with the decree passed by the trial Court, the petitioner herein had preferred an appeal against the same before the Appellate Court. However, that appeal was also dismissed, vide judgment and decree dated 17.02.2012. Aggrieved against the said judgment and decree, the present petitioner had also preferred Regular

Second Appeal No.5163 of 2014 before this Court. However, that RSA was also dismissed by this Court, vide judgment dated 13.10.2015. No further appeal was filed by either of the parties against the judgment passed by this Court. Hence, the decree passed by the trial Court had attained finality.

Since, as per the judgment and decree passed by the trial Court, the parties were entitled to specific shares and portions, which were demarcated in the site plan attached with the judgment and decree; as A, B, C and D for respective parties, therefore, respondent No.2 filed an execution petition on 12.05.2012 before the Executing Court for seeking possession of his share only, which was specified to be 'D' in the site plan. It is that execution petition which is still pending; and from which the present revision petition has arisen.

Another fact which deserves to be noticed is that respondent No.1, who is the father of the petitioner and the remaining respondents had expired on 24.08.2001 before the final decree was passed by the trial Court. Hence, during the execution proceedings, the present petitioner filed objections under Section 47 of CPC claiming that since the father of the petitioner had left a Will and had also executed a sale deed in his favour, therefore, the partition could not have been finalized; except by dealing with the share of his father, which was to devolve upon the petitioner. The said objections were dismissed by the Executing Court holding that under the final decree, the father of the parties was entitled to portion 'A' marked in the site plan. Therefore, the fresh dispute, if any related to only portion 'A' and has nothing to do with portion 'D'; qua which the execution petition was filed. Challenging that order passed by

the Executing Court, the present petitioner filed an appeal No.205 of 2017 before the Appellate Court. That appeal was dismissed by the Appellate Court vide judgment and order dated 01.12.2017 as non-maintainable; because no such appeal is permissible under the provisions of the CPC.

In view of the orders passed by the various Courts till that stage, the Executing Court had issued warrants of possession in favour of respondent No. 2 qua the property mentioned as portion 'D' in the site plan only. Another aspect which has come up is that during the pendency of the execution petition, earlier, the petitioner had also filed an application for appointment of a Building Expert for taking safety measures, in case the house which is spread over all the portions 'A', 'B', 'C' and 'D', was to be demolished. Upon that application filed by the petitioner, the Court had deputed a Building Expert, who had submitted his report that the property between the parties could be easily divided without any demolition; but by adopting the appropriate safety measures; at the time of actual partition. Against the said report also, the petitioner preferred objections alleging that the Building Expert had not done his job properly, therefore, report of the Building Expert deserved to be discarded. However, the Executing Court had rejected that objections; filed by the petitioner; as well. The petitioner preferred review application against that order passed by the Executing Court. But that review application was also dismissed by the Executing Court vide order dated 18.01.2019 and the warrants of possession qua portion 'D' in favour of respondent No.2 were issued. Thereafter, the petitioner filed Civil Revision No.790 of 2018 before this Court challenging the above

said order passed by Executing Court. That Civil Revision was disposed of by this Court, vide judgment dated 19.10.2019, again on the basis of an agreed proposition between the parties. In that order, this Court had observed that the portions marked as 'B', 'C' and 'D' were not even under dispute by either of the parties as their respective allotments of their shares. It was further directed by this Court that the Executing Court shall take steps qua the execution and handing over the possession of portion 'D' to respondent No.2 herein, in accordance with law. While disposing of that revision petition, this Court had also observed that qua the share of the father of the parties, the application, if any filed by the petitioner would be decided by the Executing Court; within six months.

On the basis of the orders passed by various Courts upto that date, the Executing Court had again issued warrants of possession only qua portion 'D' in favour of respondent No.2, who was allotted this portion; as per the final decree passed by the trial Court dated 08.02.2011. Vide order dated 18.11.2019, the Executing Court had issued warrants of possession along with necessary police help; for 29.11.2019; and the application filed by the petitioner qua his share and qua the share of his father on the basis of a Will and the sale deed, was adjourned to await the reply on behalf of the respondents. One of the orders challenged in the present petition is this order dated 18.11.2019. On 29.11.2019 the report came that warrants could not be executed due to non-availability of police force and, therefore, it was ordered that warrants of possession be issued again. In this order, it was also said that the petitioner had filed an application for deciding the legal issues involved in the execution before proceeding with warrants of possession,

and accordingly, reply to that application was also sought. Both these orders dated 18.11.2019 and 29.11.2019 are under challenge in the present petition. However, before filing the present petition, the petitioner had again filed an appeal before the Appellate Court against order dated 29.11.2019 but the same was dismissed by the Appellate Court holding that no such appeal was maintainable under the provisions of CPC. However, even in that non-maintainable appeal, at initial stage some interim order was passed by the Appellate Court and process of Executing Court was stalled for about two months on that account. Thereafter, the present petition has been preferred.

Arguing the case on behalf of the petitioner, the counsel for the petitioner has submitted that he has no dispute qua the possession of portion 'D', as mentioned in the final decree, being given to respondent No.2. However, since there is a house spread over all the portions 'A', 'B', 'C' and 'D', therefore, the possession be ordered to be handed over in the presence of a Building Expert; so that no damage is caused to the structure of the house in the remaining portions. No other argument on any legal or factual aspect has been raised by the counsel for the petitioner.

On the other hand, the counsel for respondent No.2 has submitted that the petitioner has been waiting for getting possession of his allotted share for the past more than ten years. The petitioner has been frustrating the effort of respondent No.2 by filing all kind of objections, pleadings and the appeals, which were not even maintainable to his own knowledge. As a result, respondent No.2 has been deprived of his rightful due. However, respondent No.2 does not even have any objection, if a

qualified Building Expert/Structural Engineer is ordered to be present at the time of handing over the possession of his share as portion 'D' to him; to ensure that no damage is caused to the remaining portions of the house. The counsel has further submitted that at present the respondent No.2 does not even intend to demolish any portion of the house which comes to his portion of the property. He would only erect a separation wall separating his share from the share of the adjoining co-sharer, without causing any unnecessary damage and unnecessary demolition in the house. At present the respondent No.2 would not demolish any portion of the house except that item which comes in between when the wall is to be erected and which is necessary for making a way for entering the house from his own portion.

Having considered the argument of the counsel for the parties and having perused the case file, this Court does not find any substance in the argument of the counsel for the petitioner. On the contrary, this Court finds repeated mischievous attempts by the petitioner by making frivolous applications and by filing non-maintainable appeals and petitions; just to thwart delivery of possession to respondent No.2 of the share and portion, which was allotted to him; only as per the agreement entered into between the parties which formed part of the decree; as such. So far as the claim of the petitioner is concerned, that already stands finalized upto the Regular Second Appeal, which was decided by this Court, and thereafter, finally, in the revision petition bearing CR No.790 of 2018, which was again disposed of by this Court on the basis of agreement between the parties, under which the matter of delivery of possession to respondent No.2 qua the portion 'D' was dealt

with separately and the issue of claim of the present petitioner qua portion 'A', which comes from the father of the parties, was dealt with separately. After the said revision petition having been finally dismissed by this Court qua portion 'D' there was no legal basis, reason or occasion for the petitioner to obstruct the delivery of possession of the allotted share to respondent No.2. However again, he has filed the present petition. A perusal of the orders, against which the present petition has been filed, does not even show any actionable claim on the part of the present petitioner. The warrants of possession in favour of respondent No.2 have been issued vide the impugned order only qua portion 'D', which already stood upheld even by this Court in Regular Second Appeal and the Civil Revision mentioned above. In the present petition, the petitioner is only trying to take undue advantage of the observations made by earlier revisional Court while disposing of the revision petition, by way of abundant caution, that the possession be divided 'in accordance with law'. Order issuing warrants of possession is only a step to hand over the possession in accordance with law. Therefore, any plea raised by the present petitioner against delivery of possession of portion 'D' as the share of respondent No.2 is totally unsustainable on all counts. Hence, all his objections qua delivery of possession of portion 'D' to respondent No.2 are hereby rejected. Respondent No.2 is held entitled to absolute right to get the possession of the portion 'D', by all legal means, and by utilizing all processes of law, including the immediate police help.

However, at this stage, even the petitioner seems to have reconciled that all his tricks to be played upon any process of the Court stand exhausted, therefore, he has also not raised any objection; qua

delivery of possession of portion 'D' to respondent No.2; as such. His only prayer now is that the safety of the structure of the house be ensured at the time of taking of possession of portion 'D' by the respondent No.2. Therefore, a Structural Engineer be made to be present at the time of delivery of possession of portion 'D'. However, even this prayer is frivolous. The portions allotted to the petitioner and to the respondent No.2 are not even abutting to each other. Share of the petitioner is portion 'B' whereas the share of the respondent No.2 is portion 'D'. In between these, there is portion 'C'. Therefore, although the petitioner does not have any right to insist upon that also, however, as the matter of precaution, it would be appropriate, if respondent No.2 attempts to ensure the safety of the structure of the house; at the time of taking of the possession. Since, respondent No.2 is not a qualified Structural Engineer, therefore, it would be appropriate, if a Structural Engineer remains present at the time; when respondent No.2 takes possession of the property and erects his partition wall to ensure separation of his share from the share of the other co-sharers.

Accordingly, the present revision petition is dismissed.

However, as a precautionary measure, it is ordered that while taking possession of the portion 'D', respondent No.2 shall ensure the presence of a qualified Structural Engineer and shall create the entrance point to the structure of the house from his portion and raise the partition wall in accordance with the advice of the Structural Engineer. However, the petitioner shall not be entitled to raise any objection; qua this process before any Court or Authority. Since, the matter has been pending since long, therefore, it is also ordered that respondent No.2 shall

be entitled to police help at the time of taking of the possession and/or at the time of raising of partition wall, so as to avoid any unnecessary and undesirable situation to happen. The Commissioner of Police, Jalandhar, if approached, shall ensure the presence of the police help at the time of taking of the possession and/or at the time of raising of the partition wall.

Let the needful be done within a period of twenty days from the date of receipt of certified copy of this order.

The case be put up before the Bench on 11.01.2022 for submission of compliance report, by the respondent No.2.

09th DECEMBER, 2021
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>