

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1732-2021

Date of Decision: 31.08.2021

Prem Kumar

....Petitioner

VS

Yaspal

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ashish Gupta, Advocate
for the petitioner

SUDHIR MITTAL, J. (Oral)

The petitioner is the judgment debtor. A decree for partition of the shop in dispute was passed against him and the respondent-decree holder sought execution of the aforementioned decree vide application dated 05.02.2015. The said execution application was dismissed vide order dated 22.05.2019 on the ground that the decree passed was only a preliminary decree and not a final decree. The execution lies only after the final decree is passed. Thereafter, the respondent-decree holder has filed the application dated 01.07.2019, upon which impugned order dated 23.02.2021 has been passed by the Civil Judge (Sr. Divn.) Faridkot appointing a Local Commissioner to visit the spot for submitting the mode of partition.

Learned counsel for the petitioner submits that the second application dated 01.07.2019 is also an execution application. The first having been dismissed, the same is barred by *res judicata*.

The submission can not be accepted. On the earlier occasion, the Executing Court had held that the decree sought to be executed was only a preliminary decree and unless and until a final decree was passed no execution was

possible. The respondent-decree holder has now filed an application for passing of the final decree on which appointment of Local Commissioner has been made. The said application can not be stated to be second application for execution and, thus, the contention can not be accepted.

For the aforementioned reasons, the revision petition has no merit and dismissed.

(SUDHIR MITTAL)
JUDGE

31.08.2021
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Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No