

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1031 of 2019(O&M)

Date of decision: 21.07.2022

Tilak Raj

..Petitioner

Versus

Rajinder Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. Rahul Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

Pursuant to a partition suit between the brothers, a preliminary decree was passed on 11.02.2014. The suit for separate possession by way of partition was filed on 03.06.2008. The petitioner herein is in the possession of the entire property though he is entitled to 1/4th share only. After the preliminary decree for partition was passed, an application for final decree was filed on 19.02.2018. The petitioner appeared before the Court on 18.07.2018, however, absented himself on 29.08.2018. He was proceeded against ex-parte on 25.09.2018. In the meantime, the proceedings for preparation of the final decree continued. The Court appointed a Local Commissioner, who after visiting the property, reported that physical division of the property is not possible, therefore, the Court may order sale of the same. The court, accordingly, passed an order on 13.11.2018. The petitioner filed an application for setting aside the ex-parte proceedings on 15.11.2018. On 11.01.2019, the Court granted permission to the co-sharers

to participate in the public auction of the property. On 06.12.2018, the Court issued the schedule for sale of the property through public auction. It is important to note that on 06.12.2018, the petitioner never raised any objection rather he did not participate in the proceedings.

Today, the position is that pursuant to the order of the Court, the property has been sold through public auction and it has been purchased by three co-sharers who have 3/4th share.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper Book.

The learned counsel representing the petitioner while referring to Section 2, 3 and 6 of the Partition Act, 1893, submits that the sale of the property could only be ordered after the court had fixed a reserve price. He further submits that the application for setting aside the ex-parte proceedings were going on before a different Presiding Judge.

On the other hand, the learned counsel representing the respondents submits that once the petitioner did not choose to participate in the proceedings after the application for setting aside the ex-parte proceedings was filed, he does not deserve any indulgence in the revision petition.

As already noticed, the petitioner is entitled to 1/4th share of the property, whereas, he is in possession of the entire property. He will obviously try to delay the proceedings. As already noticed, the suit for partition was filed by the plaintiffs, who had 3/4th share in the property. The petitioner has already, successfully, delayed the partition of the property for a period of 14 years.

The evaluation of the property by the Court is a step to ensure that the property is not sold at a ridiculously low price. In the present case, the property has been sold through public auction. There are no allegations that the public auction was carried out without proper publication and notice. The property in dispute is situated in a town in the State of Punjab which is known for its industries. In that context, the matter is required to be examined. There is no reason why the petitioner did not object to the issuance of warrants of sale, particularly when he had already filed an application for setting aside the ex-parte proceedings.

It is well settled that anyone who is a party to the suit can join the proceedings, at any stage, without insisting upon setting aside the previous proceedings. The application for setting aside an ex-parte proceedings is necessary only if the party applying wants him to be relegated to the stage when he was proceeded ex-parte.

As already noticed, owners to the extent of 3/4th share were granted permission to participate in the public auction on 11.01.2019, but the petitioner never participated. Thereafter, on 06.12.2018, once again, the petitioner did not participate in the proceedings. This revision petition has been filed challenging the order by which the respondents were granted permission to participate in the public auction and against the order of drawing up the sale warrants. Now, the property already stands sold.

Keeping in view the aforesaid facts, this court does not find it appropriate to interfere, particularly when after sale of the property, the amount has already been deposited.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

July 21, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*