

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2805-2022 (O&M)

DATE OF DECISION: AUGUST 10, 2022

PRITPAL SINGH

...PETITIONER

VERSUS

PAVITTAR SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR.ASHOK K. KHUNGER, ADVOCATE FOR THE PETITIONER.

MANOJ BAJAJ, J.(ORAL)

CM-9314-CII-2022

This is an application under Section 151 CPC for placing on record Local Commissioner's report dated 30.5.2018 (Annexure P-5) and site plan (Annexure P-6).

For the reasons mentioned in the application, documents Annexure P-5 and P-6 are taken record.

CM is allowed.

Main Case

The petitioner (judgement debtor) is aggrieved against the order dated 2.7.2022, passed by the Addl. Civil Judge(Sr.Divn.), Sri Muktsar Sahib in Execution Petition No.45 of 2020, whereby it has issued warrants of possession against him.

Learned counsel for the petitioner has argued that the suit property bearing house No.5362, measuring 100 feet x 20 feet was ordered to be partitioned in three equal shares by way of decree dated 20.7.2018, and

before passing the final decree, the trial Court had appointed Local Commissioner under Order 26 Rule 13 CPC, who in her report clearly detailed the shares of the parties and also mentioned that the property is not capable of partition, as it would not be useful for the parties. The report further suggested that the house be auctioned and sale proceeds be divided amongst the owners. In this regard, he has invited the attention of the Court to the report of the Local Commissioner (Annexure P-5) as well as the site plan (Annexure P-6). He submits that though the judgement debtor has raised objections that the decree is inexecutable as the final decree also travels beyond the preliminary decree, but the same has been dismissed by the executing Court without even considering the merits, much less the report of the Local Commissioner, while issuing warrants of possession against him. He prays that the impugned order be set aside.

Heard.

After hearing the learned counsel and considering the material on record, this Court finds that the executing Court has neither examined the objections filed by the judgement debtor, nor the report of the Local Commissioner, whereupon the decree under execution is based, and the impugned order is non-speaking. Thus, the same is not sustainable.

Considering the nature of order, this Court is not inclined to issue any notice to the decree holders as this order would not cause any prejudice to them. However, it shall be open for them to seek recalling of this order in case they feel that the petitioner concealed some important facts from this Court.

Resultantly, the impugned order is set aside and it is ordered that the executing Court shall decide the issue relating to the objections in accordance with law.

August 10, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No