

118

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-3462-2022****Date of Decision: December 15, 2022**

Ajit Singh deceased through LR Petitioner
Versus
Dharmender and ors. Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rakesh Dhiman, Advocate for the petitioner.

Mr. S.K. Tripathi, Advocate for respondent No.1.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to an order dated 18.07.2022 passed by the Court of learned Civil Judge, Junior Division, Pataudi; whereby an application for setting aside the ex parte order dated 15.11.2017 moved at the instance of one of the legal heirs of defendant No. 1 has been dismissed.

Brief facts of the case are that respondent No.1 filed a suit for separate possession by way of partition along with grant of relief of permanent injunction against the predecessors-in-interest of petitioner and others, claiming himself to be co-owner over 14 marlas of land situated in the revenue state of village Babra Bakipur, Tehsil Farukh Nagar, District Gurugram as detailed in para 2 of the plaint. The same was allowed vide judgment and decree dated 30.08.2017 passed by the learned trial Court.

Based thereupon, respondent No. 1 applied for passing of final decree. Notices were issued thereupon. It has been stated at the

instance of petitioner that he being one of the legal heirs of defendant No.1 was never served at that stage and was wrongly proceeded against ex parte vide order dated 15.11.2017.

Learned counsel for the petitioner submits that petitioner only came to know about the final partition proceedings from one of the co-villager and immediately, thereafter, moved an application for setting aside the ex parte proceedings carried out against him, however, the prayer made at his instance was dismissed by the trial Court vide its order dated 18.07.2022 and the same has now been impugned by way of present revision petition.

Notice was issued to respondent No.1 vide order dated 31.08.2022. In pursuance thereof, Sh. S.K. Tripathi, Advocate puts in appearance.

At the time of hearing, learned counsel representing respondent No.1 submits that he shall have no objection, in case the ex parte proceedings dated 15.11.2017 as ordered against the petitioner are set aside, subject to respondent No.1 being permitted to raise construction over the portion of property in his possession only. To this, learned counsel for the petitioner submits that he shall have no objection, however, the construction be permitted, subject to final outcome of the partition proceedings.

Accordingly, in view of the statements made at the instance of both the respective counsels, order dated 18.07.2022 passed by the trial Court is hereby set aside, allowing the application filed at the

instance of petitioner by permitting him to participate in the final partition proceedings from the stage when he was proceeded against ex parte.

In the meanwhile, respondent No.1 may continue with the construction activity over the land in his possession only, however, the same shall be subject to his own risk and responsibility and the final outcome of the partition proceeding.

In view of the fair stand taken at the instance of respondent No.1, permitting the petitioner to participate in the final partition proceedings, in order to balance the equities, the petitioner shall deposit a sum of Rs.15,000/- as costs before the trial Court, which shall be released in favour of respondent No.1.

Considering the fact, that the partition proceedings are pending before the trial Court since long, the trial Court is requested to make every endeavour to dispose of the same finally within a period of six months from the date of receipt of certified copy of this order.

Pending application(s), if any, shall also stand disposed of

December 15, 2022
parul

(HARKESH MANUJA)
JUDGE

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