

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

CR No.4504 of 2022 (O&M)
Date of decision: 23rd November, 2022

Yograj Rana

... Petitioner

Versus

Harbans Singh

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. G.L. Bajaj, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India for setting aside of the order dated 17.08.2022 (Annexure P-5) passed by learned Addl. Civil Judge (Sr. Division), Phagwara, whereby objections moved by the petitioner to the application for passing final decree was dismissed.

Learned counsel contends that the impugned order (Annexure P-5) suffers from patent illegality and is a result of arbitrary exercise of judicial discretion. He further contends that aggrieved by the preliminary decree dated 18.11.2019, which was passed by the trial Court without affording due opportunity of being heard to the petitioner, he impugned the same by way of an appeal before the lower appellate Court. During the pendency of the appeal, the respondent filed an application for passing of final decree before the trial Court with an ulterior motive to harass and humiliate the petitioner. Learned counsel has vehemently argued that the trial Court while dismissing the objections moved by the petitioner, failed to appreciate that the application for passing final decree was not even maintainable as the

appeal filed by the petitioner was still pending adjudication. Learned counsel still further vehemently submits that the petitioner is the owner in possession of the suit property, which is a dwelling house, and since it was constructed by the petitioner it could not be partitioned, hence, the application for passing final decree deserved to be rejected.

I have heard learned counsel for the petitioner and perused the relevant material on record.

Learned counsel for the petitioner has fairly conceded that the lower appellate Court had not granted any stay with respect to the proceedings for passing of final decree which were pending before the trial Court. Therefore, mere pendency of an appeal against the preliminary decree before the lower appellate Court would not preclude the trial Court from entertaining the application for passing of final decree, thus, the trial Court cannot be faulted with for proceeding ahead with the said application. Further, this Court cannot delve into merits of the case at this stage as the appeal against the preliminary decree is still pending.

Accordingly, the impugned order does not warrant any interference by this Court and the present petition is dismissed in limine.

(MANJARI NEHRU KAUL)
JUDGE

November 23, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No