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

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Date of decision : 06.07.2023

Satbir

..... Petitioner

Versus

Moji Ram and Anr.

..... Respondents

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Suryakant Gautam, Advocate
for the petitioner.

AMARJOT BHATTI J. (ORAL)

Satbir – petitioner has filed revision petition against impugned order dated 28.03.2023 (Annexure P-7) vide which the trial Court has dismissed the objections filed by him dated 11.07.2019 (Annexure P-6) filed against the application for passing of final decree, which is Annexure P-5.

2. It is pointed out that the present petitioner and respondents No. 1 and 2 are real brothers. He had purchased suit property from his own sources of income on 25.07.1981 but the sale deed was got registered in the name of all the brothers. In September 2001, the family settlement was arrived at between the brothers and the house in dispute was exclusively given to him in the presence of Ratan Singh, Raj Singh and the respondents No. 1 and 2 were given Rs. 12 lacs in equal shares. The said family settlement was reduced into writing. The learned trial Court gave finding that he has failed to prove the said family settlement and passed a preliminary decree which is under challenge before the learned District Judge. The present petitioner filed application seeking permission to lead additional evidence dated 26.08.2019 (Annexure P-1) to prove the aforesaid

family settlement. The application was contested by respondent No. 1/plaintiff. The reply is Annexure P-2 and the order of the First Appellate Court dated 10.11.2021 is Annexure P-3. Regarding this order, Civil Revision Petition No. 3127 of 2021 was filed in which the direction has been given to the Appellate Court not to pass the final order in appeal. The copy of order dated 06.12.2021 is Annexure P-4. During the pendency of the appeal, the respondent No. 1/plaintiff filed application dated 30.04.2018 (Annexure P-5) for passing of final decree. The objections filed by him dated 11.07.2019 (Annexure P-6) have been dismissed by passing impugned order dated 28.03.2023 (Annexure P-7). It is argued that in case the final decree is passed, his appeal preferred against preliminary decree will become infructuous. Therefore, the executing Court should stay the proceedings pertaining to the passing of final decree. It is further pointed out that as per order dated 06.12.2021 (Annexure P-4), even passing of final order of the Lower Appellate Court has been stayed in Civil Revision No. 3127-2021. It is prayed that the present civil revision may be accepted and the impugned order dated 28.03.2023 (Annexure P-7) may be set aside.

3. I have considered the arguments. The factual position is not disputed. The present petitioner Satbir is the brother of respondent/plaintiff Moji Ram and respondent/defendant Halu Ram. It is matter of record that plaintiff Moji Ram filed suit for preliminary decree for partition which has been allowed and thereafter, the plaintiff Moji Ram filed application for passing of final decree, whereas, the present petitioner/defendant No. 1 Satbir has filed appeal against the said preliminary decree for partition which is pending before the First Appellate Court. It is also matter of record that when the application for leading additional evidence was declined by the Appellate Court, a revision was filed in which vide

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order dated 06.12.2021 (Annexure P-4) passing of final judgment in the said appeal has been stayed. Now, the present petitioner/defendant No. 1 has filed revision against impugned order dated 28.03.2023 (Annexure P-7) vide which the objections filed by the petitioner in application for passing of final decree has been dismissed.

I have carefully gone through the impugned order dated 28.03.2023 (Annexure P-7). The learned Court of Civil Judge (Junior Division), Rohtak has dealt with all the points raised in the said objections. It is rightly held by learned Civil Judge (Junior Division) by passing impugned order dated 28.03.2023 that the Executing Court cannot stay the proceedings for final decree on its own. The Executing Court is bound to execute the decree i.e. the passing of final decree on the basis of preliminary decree already passed by the Court. In the preliminary decree for partition, only shares are to be determined. The possession on the basis of shares are to be demarcated subsequently in the passing of final decree. Therefore, considering these facts, I do not find any reason to interfere in the impugned order dated 28.03.2023 (Annexure P-7) and the same is accordingly upheld and the Civil Revision is accordingly dismissed. However, the present petitioner can approach the First Appellate Court for the stay of execution proceedings for the implementation of preliminary decree for partition by filing application under Order 41 Rule 5 of Civil Procedure Code, 1908 and on the filing of said application, the learned First Appellate Court may dispose of the application expeditiously.

(AMARJOT BHATTI)
JUDGE

06.07.2023

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