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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4650-2022

DATE OF ORDER: 04.01.2023

Tarsem Singh

.....Petitioner

Vs.

Jagtar Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Vikas Singh, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in present Revision Petition is for directing the learned Additional District Judge, Kurukshetra to decide Civil Miscellaneous Appeal No.17 of 2022 titled as "Tarsem Singh Versus Jagtar Singh and Others" expeditiously in a time bound manner.

Brief facts of the case are that the petitioner/plaintiff had filed a civil suit for declaration as well as permanent injunction with respect to the property as described in the headnote, inter-alia, on the ground that he is co-owner in the joint property measuring 12K 13M to the extent of 9 marlas being 9/253rd share along with the defendants and that he is in exclusive possession of the said property. The petitioner/plaintiff also sought temporary injunction to the effect that the respondents/defendants

not change nature of the suit property by way of construction or may not

alienate the same without getting the property partitioned. The petitioner's application for temporary injunction was dismissed by the learned trial Court/Civil Judge, Junior Division, Pehowa vide order dated 28.02.2022 Annexure P2. The appeal there-against is pending before the learned District Judge, Kurukshetra and it is the expeditious disposal thereof that the petitioner seeks by way of present petition.

Learned counsel for the petitioner refers to zimni orders to submit that the matter has been adjourned since 08.03.2022 till 17.09.2022 only to enable the respondents to file their Power of Attorney. It is stated that the respondents have not filed the Power of Attorney and adjournments are being granted to the respondents time and again on their request thus causing grave injustice to the petitioner. It is accordingly, submitted that a direction be issued to the Id. Additional District Judge, Kurukshetra to decide Civil Miscellaneous Appeal No.17 of 2022 expeditiously in a time bound manner. No other submission is made on behalf of the petitioner.

I have heard Id. Counsel for the petitioner.

A Perusal of zimni orders shows that the matter first came up for hearing before the learned Additional District Judge, Kurukshetra on 08.03.2022 whereby notice in the main appeal and petitioner's application under Order 39 Rules 1 and 2 CPC was issued. Subsequently, in order dated 16.03.2022 it has been recorded that "*Power of attorney on behalf of respondents no.1 to 6 has been filed. The same is taken on record. Service in the instant civil miscellaneous appeal is complete. Be*

listed for 16.4.2022 for arguments. Trial Court record is ordered to be returned and same be requisitioned one day prior to the date fixed”.

Thereafter, matter was adjourned on 16.4.2022, 7.5.2022, 25.5.2022 at joint request by counsel for both the parties. Subsequent Zimni orders reveal that the matter has been adjourned on various dates for arguments, as well as to enable the respondents to file their Power of Attorney. However, learned counsel for the petitioner is unable to explain this discrepancy, as to why case was being adjourned to enable respondents to file their Power of Attorney when, as noticed above in order dated 16.3.2021, Power of Attorney had already been filed by the respondents. In any event, this fact ought to have been pointed out by Id. Counsel for the petitioner to the learned Court below.

Further, a perusal of the order dated 28.02.2022 whereby the petitioner's application under Order 39 Rules 1 & 2 CPC seeking temporary injunction was dismissed shows that the suit property was actually partitioned as far back as in the year 2003, although the same was not reflected in revenue record. The petitioner is stated to have come into ownership/possession over the suit land by way of gift deed dated 12.11.2010 and partition agreement dated 27.08.2003, which are also stated to bear the signature of the petitioner. Father of the petitioner is also said to have mentioned the factum of partition in his registered Will dated 30.06.2004. It is on the basis of the above facts that the learned trial Court had refrained from granting interim relief to the petitioner. No doubt, appeal against the same is pending and matter will be decided in the said pending

appeal, and the observations made herein will not affect the merits of the matter in any manner. However, in view of the above facts, no prima facie ground is made out to grant direction as sought by the petitioner by way of present Revision Petition.

The present Revision Petition accordingly, stands dismissed.

04.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No