

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

CR-7162-2019(O&M)

Date of decision:-3.3.2023

Rani Kaur and another

...Petitioners

Versus

Manjit Singh @ Munna and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arihant Goyal, Advocate
for the applicants/petitioners.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Manjit Singh @ Munna – son, Balvir Kaur, Darshan Kaur and Nikki Kaur - married daughters of Harnek Singh had filed a suit for separate possession by way of partition against defendants i.e. Rani Kaur wife of Jasvir Singh son of Harnek Singh as well as Jasvir Singh son of Harnek Singh contending that Harnek Singh was exclusive owner in possession of the residential house situated near Railway Crossing, Gobind Colony, Barnala; he had expired on 15.3.2003 without leaving any Will, as such his estate devolved upon his LRs by natural succession in equal shares; Smt.Amar Kaur widow of Harnek Singh had executed a registered Will dated 8.4.2011 in respect of her share in favour of her daughter-in-law defendant No.1 Rani Kaur and after death of Amar Kaur on 29.4.2011 her share devolved upon Smt. Rani Kaur, therefore, the plaintiffs and defendants are co-owners in possession of the house in equal shares; on

account of dispute between the parties, the plaintiffs wanted to get their share partitioned.

2. On notice, the defendants appeared. Defendant No.1 in the written statement filed by her contested the claim of the plaintiffs contending that on the basis of Will executed by her mother-in-law Amar Kaur, she has become owner to the extent of 1/2 share in the house. Whereas defendant No.2 in the written statement filed by him admitted the claim of the plaintiffs in toto pleading no objection, if suit of the plaintiffs was decreed.

3. Issued on merits were framed. The parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

4. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Barnala vide judgment and decree dated 28.1.2016 held that plaintiffs No.1 to 4 are entitled to share in the suit property to the extent of 1/6 share each, whereas defendants No.1 and 2 were entitled to 1/6 share each and a preliminary decree in that regard was ordered to be passed accordingly. Furthermore, the defendants No.1 and 2 were restrained from selling the suit property beyond their share till partition.

5. Though defendant No.1 Rani Kaur had preferred an appeal before District Judge, Barnala but that appeal was time barred. The appellant had not furnished correct address of respondents despite being given several opportunities, as such the appeal was dismissed for non-compliance of order of the Court vide order dated 9.4.2018, copy of order being Annexure P2.

6. Thereafter, an application for passing of final decree was moved on behalf of the plaintiffs. The trial Court had appointed a Local Commissioner to suggest the mode of partition. The Local Commissioner after visiting the spot had submitted his report proposing that property be partitioned by constructing a wall.

7. That report was approved by the trial Court and warrants of possession were accordingly issued.

8. Since the decree could not be executed after recording statement of Bailiff, the trial Court vide order dated 16.8.2019 recorded satisfaction that warrants of possession cannot be executed without police help and the matter be taken up for grant of police help for execution of warrants.

9. Feeling aggrieved, the Jds/defendants have filed the present revision petition. They have challenged three orders in this revision petition. First dated 9.7.2019 vide which report of Local Commissioner had been accepted and warrants of possession were directed to be issued, copy of order Annexure P3. The second order dated 16.8.2019 vide which the police help was ordered to be granted for execution of warrants, copy Annexure P4 and third order dated 16.9.2019, copy Annexure P5 vide which fresh warrants of possession were ordered to be issued and DH was directed to appear before concerned SHO for police help.

10. It is pertinent to mention here that on 14.11.2019 in this Court, counsel for the petitioners sought an adjournment for placing on record some material documents. But he failed to place on record the same. Therefore, the revision petition was dismissed for want of

prosecution vide order dated 13.2.2020.

11. Now the applicants/revision petitioners filed CM-12034-CII-2021 for recalling of order dated 13.2.2020 vide which the revision petition was dismissed for want of prosecution.

12. I have heard learned counsel for the applicants/revision petitioners besides going through the record and I do not see any reason to recall the order. In any case on merits also the revision petitioners do not have any case.

14. The revisional jurisdiction of this Court is quite limited. It is to be exercised only when the order passed by the Court below is arbitrary, perverse or it is found to be passed against settled legal position. Here the orders being impugned are not found to be suffering from any such infirmity. The plaintiffs/DHs certainly have a right to ripe fruit of the decree passed in their favour, which has attained finality and the defendants, who are revision petitioners cannot be allowed to obstruct the execution by raising frivolous and untenable objections.

15. Finding no merit in the application as well as in the main revision petition, the same stand dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No