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

**CR-6230-2022 (O&M)
Date of Decision: 01.03.2023**

Davinder Kumar

....Petitioner

Versus

Vijay Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Soi, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is dismissal of application CM No.573 of 2020 (Annexure P-3) dated 10.12.2020, filed by respondent No.1 in Civil Suit No.230 of 2009, seeking final decree of partition. It is averred *inter alia* that the petitioner/defendant No.4 has been arbitrarily proceeded *ex parte* and his reply (Annexure P-4) dated 09.02.2021 opposing the passing of final decree of partition dated 10.12.2020 (Annexure P-3) has been casually brushed aside.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Mother of petitioner/defendant No.4 expired in the year 2009. Property measuring 64 square yards was in the name of mother of petitioner. She herself had also filed a civil suit in the year 2005 against her son respondent No.1 seeking mandatory injunction, wherein she stated in unequivocal terms that her son respondent No.1 was harassing her at that point of time. She also stated that she

had already disinherited him. A legal notice was thus served on him on 02.04.2004 and he was asked to vacate the room on the first floor of house. She had disowned him and had also sworn an affidavit in that regard.

2.2. Whereas, respondent No.1 on the other hand filed a suit seeking relief of declaration and permanent injunction against petitioner/defendant No.4 and rest of respondents for separate possession of 1/5th share of the property. Ld. Civil Judge only partly allowed the relief of permanent injunction while declining relief for separate possession and alienation. An additional question was framed before Ld. First Appellate Court as the respondent No.1 had challenged the order passed by Ld. Civil Judge. Question as raised by petitioner/defendant No.4 was framed by Ld. First Appellate Court as under:

Whether the suit is not maintainable in view of the fact that Sudarshan Kumari has executed a legal, valid and registered Will dated 30.03.1989?

However, it is so averred that Ld. First Appellate Court gave absolutely no findings at all as to how petitioner failed to prove authenticity of Will.

2.3. It is also pleaded by the petitioner that Ld. First Appellate Court completely ignored the factum of Will and no reasons have been mentioned in order dated 15.05.2017 (Annexure P-1) as to how petitioner failed to prove the Will in question.

After passing of order (Annexure P-1), according to averments of respondent No.1, parties entered into a compromise. Petitioner alleges that he has been duped in the present case as he had never signed the compromise document voluntarily.

2.4. It is further pleaded by petitioner that respondent No.1 has shown a tearing urgency in the matter by filing application (Annexure P-3). There is

absolutely no justification for such a perverse action on his part. Petitioner is well within his right to seek appropriate remedy against order passed by Ld. First Appellate Court. Petitioner has also filed reply on 09.02.2021 (Annexure P-4) to the application for final decree (Annexure P-3).

3. Learned counsel for petitioner contends that since the moot issue regarding Will of petitioner's mother has not been decided appropriately, further adjudication upon the proceedings without taking a due note of it, would be an absolute abuse of process of law. It is principle of natural justice that no one can be condemned unheard and that an opportunity of hearing should be granted. He further contends that the so called compromise cannot be simply thrust upon petitioner and it has to be out of one's free will and understanding. Further a compromise deed on the basis of fraud, coercion and undue influence can never be imposed upon a party.

3.1. Learned counsel for petitioner further submits that application (Annexure P-3) has been objected to by petitioner by filing reply to the same. Dismissal of the application of respondent No.1 for final decree has been sought. On one hand the same has been kept pending, and on other hand, Ld. Trial Court has proceeded to post the matter for final hearing. He submits that a perusal of zimni orders from December-2020 onwards reflects that despite the application being ripe for arguments and disposal, for no reason it continued to be adjourned while carrying out other proceedings in the trial.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no legal prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. Having heard the arguments of learned counsel, I am of the view that ordinarily the pendency of application or the discretion of Ld. Trial Court to decide

the same at the final stage is no ground to interfere in the extraordinary revisional jurisdiction. However, since learned counsel expresses his apprehension that final order in the trial may be passed without taking any formal decision on the pending prayer for dismissal of the application for final decree, it is expected from Ld. Trial Court to dispose of the petitioner’s prayer for dismissal of the application for final decree by passing appropriate orders *qua* the same, either before or at the time of deciding the application for final decree.

6. Disposed of, accordingly.
7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 01, 2023
ashish

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