

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

**Civil Revision No.6247-2022
Date of Decision : 13.07.2023**

Har minder Singh

..... Petitioner

Versus

Tarlochan Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Rajesh Gupta, Advocate
for the petitioner.

Petition qua respondent No.1 dismissed
vide order dated 04.01.2023.

Mr. Arpan Singh, Advocate
for Mr. Abhimanyu Singh, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 25.08.2022 (Annexure P-7), passed by the Civil Judge (Junior Division), Jagadhri vide which the objections filed by the present petitioner against the demarcation report submitted by the Local Commissioner were dismissed. The petitioner further challenges the order dated 09.12.2022 (Annexure P-8), passed by the Civil Judge (Junior Division), Jagadhri vide which warrants of possession have been ordered to be issued.

The facts, necessary for the decision of the present petition, are that respondent No.1-Tarlochan Singh (hereinafter referred to as 'respondent No.1-plaintiff') filed a suit for possession by way of partition by metes and bounds of 1/3rd share of four shops, residential portion and vacant plot (fully described in the

plaint) situated in Yamuna Nagar (District Jagadhri). The defendants in the said suit were the present petitioner Harminder Singh (hereinafter referred to as 'the petitioner-defendant No.2') and Harbans Singh (hereinafter referred to as 'respondent No.2-defendant No.1'). All three namely Tarlochan Singh (respondent No.1-plaintiff), Harbans Singh and Harminder Singh (respondent No.2-defendant No.1 and the petitioner-defendant No.2 respectively) are real brothers. The suit was decreed vide judgment and decree dated 22.04.2016 (Annexure P-1), passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri. An appeal was preferred by the petitioner-defendant No.2 which was also dismissed by the Additional District Judge, Yamuna Nagar at Jagadhri vide judgment dated 09.09.2022 (Annexure P-2). An application (Annexure P-3) was filed by respondent No.1-plaintiff for preparation of final decree on the basis of the preliminary decree. Report dated 14.01.2019 (Annexure P-4) was submitted by the Local Commissioner. The petitioner-defendant No.2 Harminder Singh submitted objections to the report of the Local Commissioner which were dismissed vide order dated 25.08.2022 (Annexure P-7). Finally, warrants of possession were ordered to be issued vide order dated 09.12.2022 (Annexure P-8).

Learned counsel for the petitioner has raised only one argument. It has been submitted that since the suit had been filed by respondent No.1-plaintiff, defendant No.1 Harbans Singh would not be entitled to 1/3rd share. It has been contended that respondent No.1-plaintiff Tarlochan Singh would be entitled to 1/3rd share and the present petitioner-defendant No.2 would be entitled to the remaining 2/3rd share.

On the other hand, learned counsel representing respondent No.2-defendant No.1 has submitted that in the judgments and decree dated 22.04.2016 and 09.09.2022 (Annexures P-1 and P-2), it had duly been held that all three

parties are joint owners in possession of the suit property and, therefore, it cannot

be contended by the petitioner that he would be entitled to 2/3rd share of the suit property.

I have considered the submissions made by learned counsel for the parties.

Admittedly, respondent No.1-plaintiff Tarlochan Singh filed a suit for possession by way of partition qua the suit property. The said suit was decreed on 22.04.2016 and it was categorically held by the trial Court that the suit property is jointly owned and possessed by the parties to the lis. Accordingly, a preliminary decree for separate possession by way of partition by metes and bounds to the extent of 1/3rd share was passed. The petitioner preferred an appeal against the said judgment and decree but the same was dismissed on 09.09.2022. Nowhere in the said appeal, it was contended that the petitioner was entitled to 2/3rd share. In any case, the appeal was dismissed. In pursuance of an application having been filed by respondent No.1-plaintiff for preparation of final decree, a Local Commissioner was appointed. The Local Commissioner Sh. Om Kamboj, Advocate submitted his report dated 14.01.2019 which is on record as Annexure P-4. The parties were present when he visited the suit property. Measurement was carried out, photographs were clicked and ultimately it was suggested that since all three parties had equal share in the suit property, it would be in the interest of justice that front of the suit property be partitioned in equal shares. Accordingly, a site plan was prepared and the mode of partition was suggested. Being dissatisfied with the report, the petitioner-defendant No.2 filed objections which were also dismissed vide order dated 25.08.2022 (Annexure P-7). The argument that respondent No.2-defendant No.1 Harbans Singh would not have any share since he had not filed the suit and it was Tarlochan Singh, respondent No.1-plaintiff, who had filed the suit is devoid of merit. The Courts, while dealing with the suit filed by respondent No.1-plaintiff, had categorically held that all three parties were owners in joint possession of the suit property. Under the

circumstances, the same had to be partitioned in equal shares. The report of the Local Commissioner was a fair report and accordingly, the objections submitted by the petitioner-defendant No.2 were rightly dismissed. I do not find any illegality in the order dated 09.12.2022 also vide which the warrants of possession were issued. The same had to be issued once objections against the report of Local Commissioner had been rejected and application for final decree was pending. In the considered opinion of this Court, the present petition is completely devoid of merit on account of the aforementioned reasons.

In view of the aforesaid, I do not find any merit in the present petition and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

13.07.2023
mamta

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