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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 1260 of 2020 (O&M)
Date of Decision: 02.08.2024

Manmohan Singh
..... Petitioner

Versus

Sarwan Singh and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dinesh Sharma, Advocate
for the petitioner-defendant No. 1.

Mr. Suvir Kumar, Advocate
for the contesting respondent No. 1-plaintiff.

HARKESH MANUJA, J. (ORAL)

CM-22489-CII-2023

Prayer in the present application moved on behalf of the applicant-respondent No. 1/plaintiff, is for placing on record sale deeds dated 15.01.1999 & 15.11.1960 and Jamabandi for the year 2000-2001 as Annexures R-1 to R-3 respectively.

Application is **allowed**, as prayed for, subject to all just exceptions. The aforesaid documents are taken on record as Annexures R-1 to R-3.

Registry to do the needful.

MAIN CASE

The petitioner/defendant No. 1-Judgment Debtor, by way of present revision petition, seeks setting aside of an order dated

23.01.2020 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Ludhiana / Executing Court in **Execution No. 461 of 2018**, titled “**Sarwan Singh Versus Manmohan Singh**”, whereby his objections to an execution presented by respondent No. 1/plaintiff-Decree Holder, stands dismissed.

[2] Briefly stating, respondent No. 1 being plaintiff filed a suit for possession of specific portion out of plot measuring 8½ marlas bearing Khasra No. 991, 992, Khewat No. 16 & 25, Khatauni No. 16 & 26 shown as red colour in the site plan attached with the plaint. The said suit, i.e. **Civil Suit No. 356 dated 13.09.2004**, titled “**Sarwan Singh Versus Manmohan Singh and another**” was decreed vide judgment and decree dated 27.02.2012 passed by the trial Court. The operative part of the decree is extracted hereunder:-

“ In this case it is hereby ordered that the suit of the plaintiff succeeds and same stands decreed with no order as to costs and three months time is granted to the defendant to vacate the portion shown as red in the site plan and defendants are restrained from raising any construction over the portion shown as red in the site plan of the property in question and defendants are also restrained from interfering in portion shown as green in the site plan of the house in question which is in peaceful possession of the plaintiff. ”

[3] Based thereupon, respondent No. 1-Decree Holder filed execution petition wherein the petitioner-Judgment Debtor No. 1 filed objections while stating that the property in question being joint, delivery of any specific portion therefrom was not permissible in law.

The aforesaid objections were contested on behalf of respondent No. 1-Decree Holder. The Executing Court, vide order dated 23.01.2020 dismissed the objections filed at the instance of petitioner.

Hence, the present revision petition.

[4] Impugning the aforesaid order dated 23.01.2020, learned counsel for the petitioner submits that the suit property / plot in question happened to be joint Hindu Family co-parcenary property and so far, it was not partitioned amongst the co-parceners, including the petitioner as well as respondent No. 1-plaintiff and thus, the actual physical possession of a part thereof could not be delivered in favour of respondent No. 1-plaintiff. He further submits that even the suit for separate possession by way of partition, filed at his instance, was pending adjudication and thus, prays that the impugned order was unsustainable in the law.

No other argument has been raised on behalf of the petitioner.

[5] On the other hand, learned counsel for respondent No. 1-Decree Holder opposes the prayer made on behalf of the petitioner, while submitting that a decree for specific portion of plot in question was passed in his favour vide judgment and decree dated 27.02.2012 by the trial Court, which was even upheld by the First Appellate Court vide judgment and decree dated 26.09.2014, in such circumstances, no such objection at the instance of petitioner-Judgment Debtor was maintainable and thus, the impugned order warrants no interference.

[6] After hearing learned counsel for the parties and having gone through the paper-book, I am unable to find substance in the submissions made on behalf of the petitioner.

[7] A perusal of the record shows that a specific decree, directing the petitioner-defendant No. 1 to vacate the portion shown as red in the site plan forming part of the record was passed against him by the trial Court on 27.02.2012, which was even upheld by the First Appellate Court. In such circumstances, when the decree granted in favour of plaintiff was for a specific portion depicted in the site plan with red colour, the plea raised at the instance of petitioner-defendant No. 1 that the possession of specific portion could not be delivered to respondent No. 1-plaintiff, was not maintainable, there being no ambiguity *qua* the same in the judgment and decree passed by the trial Court. Hence, no illegality or perversity can be found with the impugned order dated 23.01.2020 passed by the Executing Court while dismissing the objections filed at the instance of petitioner-defendant No. 1.

[8] Consequently, finding no merit in the present revision petition, the same is hereby **dismissed**.

[9] However, it may also be pointed out here that the plea raised on behalf of the petitioner that the suit property is joint Hindu Family coparcenary property and the suit for partition is pending between the parties; delivery of possession in favour of respondent No. 1-plaintiff in terms of judgment and decree dated 27.02.2012 passed by

the trial Court shall be subject to outcome of the suit for partition (CS No. 1709 of 2021) pending between the parties.

[10] Pending miscellaneous application(s), if any, shall also stand disposed off.

August 02, 2024
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(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No