

109.

2024:PHHC:002714

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

CR-2862-2021

Date of decision: 09.01.2024

Gurmail Singh (now deceased) through his LR Malkiat Singh
... Petitioner

Versus

Mohinder Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ram Kumar Chauhan, Advocate, for the petitioner.

Ms. Dhivya Jerath, Advocate, for respondent No.1.

GURBIR SINGH, J. (Oral)

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 07.10.2021 (Annexure P-4) passed by learned District Judge, Hoshiarpur, whereby the application under Order 41 Rule 5 read with Section 151 CPC, filed in Civil Appeal No.128, dated 12.03.2020, by the appellant for staying the execution of judgment and decree dated 31.01.2020, has been dismissed.

2. Brief facts of the case are that respondent No.1-plaintiff (hereinafter called, "plaintiff") filed a suit, through attorney Surinder Kaur, for partition of house/property, as mentioned in the head note of the plaint, and for permanent injunction restraining the petitioner-defendant (hereinafter called, "defendant") from taking any exclusive possession of specific portion of land, alienating and demolishing the

existing construction by raising new construction therein till regular partition takes place between the parties to the suit.

2.1 The said suit was contested by some of the defendants. Ultimately, vide judgment and decree dated 31.01.2020, the learned trial Court decreed the suit and preliminary decree was passed to the effect that the plaintiff is entitled for partition of suit property to the extent of 21/62 share in the property bearing Khasra No.57/5/3/2 and 57/6/3 plus 1/3rd share in the property i.e. within red line of the village and 1/6th share in Khasra No.555 by metes and bounds and further the defendant herein and other defendants in the suit were restrained from changing the nature, shape of property by raising construction and also from alienating the joint property.

2.2 Aggrieved against the said judgment and decree dated 31.01.2020, petitioner-defendant filed an appeal, which is pending adjudication. Along with the appeal, the defendant also filed an application (Annexure P-2) under Order 41 Rule 5 read with Section 151 CPC for staying the execution of said judgment and decree. Since said application remained pending due to Covid-19 pandemic, defendant moved another application dated 02.09.2020 (Annexure P-3) to decide the application (Annexure P-2) by contending that due to heavy rains, the roofs of kitchen, cattle shed and tin shed of the house have fallen down and he has no other place to live and tether his cattle. He wants to reconstruct the fallen roofs by repairing and replacing the old beams and

batons. However, vide order dated 07.10.2021, the application for staying the operation of impugned judgment was dismissed. It is said order which has been impugned by way of present revision petition.

3. Learned counsel for the petitioner contends that the house in his possession is in dilapidated condition and can fall at any time and he has no other house to live and tether his cattle. It is contended that the respondent-plaintiff has already excess area in his possession and the suit has been filed with mala fide intention to harass the petitioner. The entire suit property is residential abadi property and all the co-sharers have raised construction over the property as per their share.

4. On the other hand, learned counsel appearing on behalf of respondent No.1 submits that the petitioner-defendant moved applications to change the roof of the kitchen, verandah and to reconstruct the khurli, which applications were allowed and Local Commissioner was also appointed to inspect the spot and to make said changes under his supervision, but lateron, the defendant withdrew the applications. It is contended that he had moved the applications just to harass the respondent-plaintiff. He is having separate residence and cattle shed. He himself partly demolished the tin shed and under the garb of court order, he wants to take possession of suit land which is in possession of the plaintiff who is residing abroad.

5. I have heard the submissions of learned counsel for the parties and have gone through the paper book.

6. In the present case, preliminary decree has been passed vide which share of the plaintiff and others has been determined. Since the suit property is yet to be partitioned and final decree has not been passed, the learned appellate Court has rightly held that the petitioner-appellant is not justified in seeking demolition of the existing construction and to raise new construction as it would prejudice the interest of other co-sharers. The order impugned is in accordance with law and this Court does not find any illegality in the said order. The revision petition is without any merit and it is dismissed accordingly.

7. The appeal against the judgment and decree dated 31.01.2020 is stated to be pending for 08.03.2024.

8. The learned appellate Court concerned is directed to expedite the disposal of the appeal. In case the petitioner-appellant moves an application for disposing of the appeal in a time bound manner before the learned appellate Court concerned and apprise about the hardships being faced by him, then said Court shall pass speaking order thereon in accordance with law.

(GURBIR SINGH)
JUDGE

January 9, 2024
sanjeev

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