



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

116

**CR-5250-2024 (O&M)
Decided on: 20.09.2024**

Gurpinder Pal Singh

...Petitioner

Versus

Jagjit Singh and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Arvind Kashyap, Advocate
for the petitioner.

Mr. Aman Bahri, Advocate
for respondents No.1, 2, 3(a) and 3(b).

RITU TAGORE, J.

1. This revision is directed against the order dated 21.08.2024 (Annexure P-1), passed by Additional Civil Judge (Senior Division), Chandigarh, whereby objections filed by the petitioner to the passing of final decree in a partition suit, were dismissed.

2. Learned counsel contends that respondents No.1 to 3 (plaintiffs before learned trial Court) filed a suit for injunction and, alternatively, for a partition and possession, against the petitioner (defendant No.2 before learned trial Court) and respondent No.4. The suit was partly decreed on 12.04.2018 vide judgment and decree dated 12.04.2018 (Annexure P-2), and



a preliminary decree for partition of subject house was passed, granting 25% share to respondent No.4 and to other respondents No.1 to 3 as specified, with further directions to partition the subject house as detailed in the decree.

3. The learned counsel submits that respondents No.1 to 3, filed an application (Annexure P-3) for passing final decree. The petitioner filed reply/objections (Annexure P-4) *inter alia* raising the plea that issue of partition can be settled between the parties, being co-owners. It is stated that the learned Court dismissed the objections and issued warrant of sale, fixing the schedule.

4. The learned counsel contends that order is against the provisions of law. Section 3 of the Partition Act, 1893 allows the shareholders to first bid amongst themselves for the property, and this aspect was not considered. The objections were dismissed, and the property was wrongfully put up for sale. It is also contended that the learned trial Court did not provide any mode of auction, and a valuation of the property was also not called for. Furthermore, expenses incurred by the petitioner on the first and second floor were not adjusted. It is contended that mode of partition must be determined on passing of final decree, which was not done. On these submissions, impugned order was assailed as unsustainable in the eyes of law and a prayer was made to set it aside.

5. Contrarily, learned counsel supported the order, stating that same is legal and valid. It is stated that the preliminary decree dated 12.04.2018 has not been challenged and has attained finality. Learned counsel further contends that the petitioner's argument regarding his expenditure on the construction of the first and second floor of the house



was dealt with by the learned trial Court while deciding the suit as well as the objections and same was decided against him. It is stated by the learned counsel for the respondents that learned trial Court categorically observed that partition of the property by metes and bounds is not permissible in Chandigarh. This position is unlikely to be denied by the petitioner. It is argued by the learned counsel that the order regarding sale of subject property and distribution of sale proceeds amongst the parties as per their share was passed on the consensus of the parties. Now the petitioner is estopped from challenging the order.

6. Learned counsel submits that the Court Commission shall auction the property as per rules, including obtaining a valuation of the property, based on its structure and other relevant factors. No prejudice would be caused to the petitioner, as he may participate in the open auction and purchase the same.

7. Learned counsel also submits that the learned trial Court did not grant preferential rights to the respondents No.1 to 3 to purchase 25% of share of petitioner, vendee of respondent No.4 (defendants before the learned trial Court). In these circumstances, the order for an open sale is valid, which shall allow the parties and outsider to participate in the sale proceedings, ensuring in obtaining the best price of the house. A prayer is, therefore, made to dismiss the revision, being without any merits.

8. I have heard learned counsel for the parties and gone through the paper book.

9. It is a matter of record that the respondents No.1 to 3, filed a suit for injunction and alternatively, for partition and possession,



which was partly decreed, and preliminary decree (Annexure P-2) was passed vide judgment and decree dated 12.04.2018. The operative part of the judgment dated 12.04.2018 (Annexure P-2) reads as under:-

“26. In view of my findings on Issues no.1 to 3, suit filed by the plaintiffs partly succeeds and the same is hereby partly decreed with proportionate costs to the effect that a preliminary decree for partition of the house in question is passed holding that Smt. Mohinderjit Kaur Teja, LR of deceased plaintiffs no.1 and 2 is the owner to the extent of 50% share, plaintiff no.3 Sh. Bir Birender Singh is the owner to the extent of 25% share and defendant No.2 Sh. Gurpinder Pal Singh is the owner to the extent of 25% share in the house in question. The house in question is to be partitioned by such mode of partition as may be determined and settled by the Court at the stage of passing the final decree, which may include putting the house to auction and distributing the sale proceeds as per shares, or such other mode as may be determined by the Court. However, the plaintiffs are not held entitled to any preferential right to purchase 25% share of defendants in the house in question or to an injunction directing the defendants to transfer such 25% share in the house in question in favour of plaintiffs or to restrain the defendants from interfering into peaceful possession and enjoyment of plaintiffs over the house in question, and suit qua said reliefs is dismissed. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

10. The respondents No.1 to 3, moved an application (Annexure P-3) for passing final decree in terms of judgment and decree dated 12.04.2018. The petitioner filed reply/objection (Annexure P-4), that were



dismissed, vide impugned order dated 21.08.2024 (Annexure P-1), which reads as follows: -

“Arguments on objections heard. The only objection raised by objector is that he has raised some construction from his own pocket, upon the first floor of house in question and he should be compensated for the amount paid by him for that construction. Perusal of judgment and decree dated 12.04.2018 passed by learned Predecessor shows that the objector was granted 25% share in the whole property. Once, learned Predecessor of this Court has decided the partition proceedings and has granted the share of the whole property to the objector, this Court, at this stage, can not pass any order with respect to awarding compensation qua the construction allegedly raised by the objector on the first floor of the house in question. In such circumstances, the objections are hereby dismissed.

Since, partition of property by metes and bounds is not allowed in Chandigarh, as such, both the parties agreed that suit property be put on sale and the sale proceeds be disbursed as per share of the parties. Accordingly, let warrant of sale of property in question be issued as per following schedule:-

Court Notice : 09.09.2024

Spot Notice : 30.09.2024

Auction and sale : 15.10.2024

Report : 04.11.2024”

11. The argument presented on behalf of the petitioner that sale should first be held between the parties, cannot be countenanced for the reasons; firstly, the order for the sale was passed based on the consensus of the parties. Secondly, the restriction placed on the respondents No.1 to 3,



from exercising a preferential right to purchase 25% share of the petitioner, in the preliminary decree would work inequitable for them, as it would allow only the petitioner the opportunity to exercise preferential right, not the respondents. The provisions of Section 3 (*ibid*) cannot be read differently for the parties. The appropriate and equitable course of action, in these circumstances, would be to put the suit property for sale so that parties or any other interested persons can participate in the sale, thereby obtaining the best price of the property. The sale proceeds can then be shared according to respective shares or one of the parties may choose to purchase the suit property. The contention of the counsel for the petitioner that he never consented to putting the suit property for sale is untenable, as no plea has been raised in the present petition, nor has any evidence been placed on record to show that he ever moved any application for review of the order, whereby his consent was recorded.

12. Another plea by the petitioner that expenditure made by him on the first and second floor of the house was not considered is again not acceptable. A perusal of the preliminary decree and the objection reveals that his plea was duly considered and was rejected. As far as the contention that a final decree has not been passed, is concerned, the impugned order was passed in response to the reply/objection raised by the petitioner to an application for the passing of the final decree. Therefore, this contention is also untenable.

13. The other contention of the counsel for the petitioner that valuation of the property was not obtained before passing the order for putting the suit property on sale is concerned, all necessary procedures will



be followed by the Court Auctioneer, before putting suit property on auction/sale. In case of any infraction of the rules or procedure, the petitioner may raise a challenge to the same as permissible to him under the law.

14. As a sequel to the foregoing discussion, it is held that the learned trial Court has rightly exercise the jurisdiction that vested in it and the order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any intervention by this Court. Accordingly, the revision petition is dismissed.

15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

20.09.2024
Rimpal

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