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

(122)

CR-5500-2024

Date of Decision: - 23.09.2024

Parkash Kaur and another

....Petitioners

Versus**Paramjit Kaur**

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Kanwaljeet Singh, Advocate,
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 30.07.2024 (Annexure P-10) passed by the Civil Judge (Junior Division) Ludhiana vide which the suit property was ordered to be put on auction and also the impugned order dated 06.09.2024 (Annexure P-11), vide which the warrants of sale has been issued.

2. Brief facts of the case are that the respondent, who is a widow lady, had filed a suit for separate possession to the extent of ½ share by way of partition by meets and bounds of the property i.e. house bearing No.2407/A, B-17 situated at Basti Abdullahpur, Ludhiana. Although, no date has been mentioned in the plaint, but it has been stated by the learned counsel for the petitioner that the said suit was filed on



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23.03.2012. The defendant No.1/petitioner No.1 had filed the written statement on 14.07.2016 (Annexure P-2) raising all possible objections. Similarly, defendant No.2/petitioner No.2 also filed the written statement dated 04.05.2017 (Annexure P-3) raising all possible objections. The trial Court vide the judgment and decree dated 03.04.2018 (Annexure P-4), decreed the said suit in the following terms:-

“15. As a result of my above findings, the suit of the plaintiff succeeds and the same is decreed with cost. The plaintiff & defendants are declared to be owner of 1/3 share each out of house in question. The preliminary decree qua the partition of house in question is accordingly passed in favour of the parties as per their shares stated above. Decree-sheet be drawn up accordingly. File be consigned to Record Room.”

Thus, the respondent as well as the petitioners were declared to be owners to the extent of 1/3rd share each of the house in question.

3. The respondent thereafter filed an application (Annexure P-5) for passing of a final decree. A perusal of the order dated 07.09.2022 (Annexure P-6) would show that even the said application for passing of the final decree in pursuance of the preliminary decree was opposed by the petitioners but, however, the trial Court vide order dated 07.09.2022 (Annexure P-6) was pleased to reject the said objections and ordered the appointment of a Local Commissioner who was directed to visit the spot and was to be paid Rs.6,000/- for the same. The said order has not been challenged before this Court. In pursuance of the said order, the report of the Local Commissioner dated 25.10.2022 (Annexure P-7) was submitted and the Local Commissioner had opined as under: -



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*“5. That the property being only 14' wide, cannot be physically partitioned into three portions, **as every party will get front of 5' approximately only and the length would be 33' approximately.** Even otherwise, the rooms and the small hall are of different dimensions and it cannot be said that one portion can be given to each of the parties. **The construction over the property is of such a nature, which cannot be physically partitioned. As such, the partition can only be effected by selling the property and distributing the sale proceeds between the parties according to their share.***

Hence, this report.”

4. It is thus apparent, as per the said report, that it is not possible to partition the property among the three co-sharers. Even the said report of the Local Commissioner has not been challenged before this Court. Since no appeal has been filed against the preliminary decree, thus, vide order dated 30.07.2024, it was ordered that the suit property be put to auction and a report was sought from Ms. Harpal Kaur, Advocate on 30.08.2024 and a fee for the same was assessed as Rs.5,000/-. The order dated 30.08.2024 has not been placed on record. A perusal of the order dated 06.09.2024 (Annexure P-11) would show that warrants of sale has been issued and the auction is to be held on 22.10.2024. It is apparent that since it is not possible to partition the property, thus, the Court, having left with no option, had directed the auction to take place in accordance with law.

5. Learned counsel for the petitioners has filed the present revision petition against the orders dated 30.07.2024 and 06.09.2024 and the sole plea raised by learned counsel for the petitioners is that in the present case a compromise has been effected on 28.08.2023 and as per the

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same, the respondent-plaintiff had agreed to receive Rs.6,00,000/- as total consideration for transferring her 1/3 share and the petitioners had paid an amount of Rs.1,00,000/- and the balance amount was to be paid on 18.09.2023. It is further submitted that the petitioners could not pay the balance amount and prays that time be granted to the petitioners to pay the said balance amount as per the said compromise and has further prayed that in the meantime, the auction be stayed.

6. The above argument raised by the learned counsel for the petitioners has apparently been made to further delay the proceedings. A pointed query has been raised by this Court to the learned counsel for the petitioners as to whether the petitioners are ready to pay the amount, which they had to pay on 18.09.2023, prior to 22.10.2024, learned counsel for the petitioners, on instructions, has submitted that the petitioners are not ready to pay the said amount prior to 22.10.2024. It would be relevant to mention that the amount of Rs.6,00,000/- was agreed to be received by the respondent on 28.08.2023 and a period of more than one year has elapsed since then and thus, the respondent on the said score alone, would be entitled to receive a higher amount than Rs.6,00,000/-. A perusal of the order dated 06.09.2024 (Annexure P-11) would show that even on the said date, the petitioners were not ready to deposit the entire balance amount as per the compromise relied upon by them, although, the said date was one year subsequent to 18.09.2023 and had offered only another Rs.1,00,000/- as part payment to which the decree holder had refused. The zimni order dated 18.09.2023 and the ones immediately

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thereafter have not been placed on record, but learned counsel for the petitioners has fairly submitted that the petitioners did not have the money on the said dates and thus, could not make the payment. It is thus apparent that it is the petitioners who had breached the terms of the said compromise and even now are not ready to pay the balance amount prior to 22.10.2024 and thus, it is apparent that the said pleas are now being raised only to get the auction proceedings stayed.

7. It would be relevant to note that the respondent is a widow lady and had instituted the suit in the year 2012 and after several objections taken by the petitioners, the suit of the respondent was decreed on 03.04.2018. The petitioners as well as the respondent were held to be owners of 1/3rd share each. At that stage, the petitioners did not make any offer and on account of the same, the respondent had to file an application for passing of the final decree. Even the said application was opposed by the petitioners and accordingly, vide order dated 07.09.2022, the Court appointed the Local Commissioner and rejected the objections raised by the petitioners. The report of the Local Commissioner dated 25.10.2022 was also produced, in which, as has been stated herein above, it was specifically stated that the property was only 14' wide and cannot be physically partitioned as every party would get only 5' approximately in front. The order dated 07.09.2022 as well as the report of the Local Commissioner dated 25.10.2022 have not been challenged. In the said circumstances, the only course open to the Court was to auction the property in question, which has been ordered by the Court vide the

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impugned orders.

8. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned orders dated 30.07.2024 (Annexure P-10) and dated 06.09.2024 (Annexure P-11) passed by the Civil Judge (Jr. Divn.), Ludhiana are legal and do not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

September 23, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No