



CR-307-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(308)

CR-307-2023

Date of decision: - 16.07.2025

Pritpal Singh

....Petitioner

Versus

Pavittar Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. A.K. Khunger, Advocate,
for the petitioner.

Mr. R.S. Rangpuri, Advocate,
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 03.12.2022 (Annexure P-8) passed by the Additional Civil Judge (Senior Division), Sri Muktsar Sahib.

2. Learned counsel for the petitioner has submitted that the petitioner had filed objections in the executing court to the effect that the division as given by the local commissioner, which was accepted in the final decree, was not workable as the property in question measured 100 ft. x 20 ft. It is submitted that in the said circumstances, the objections filed by the petitioner be allowed and the impugned order be set aside and

the property be ordered to be auctioned instead of being partitioned.

3. Learned counsel for the respondents, on other hand, has submitted that after taking into consideration all the facts and circumstances the trial Court had passed the final decree giving specific directions and the petitioner against the said ex-parte judgment and decree had filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte final decree dated 20.07.2018, which application was also dismissed. It is further submitted that the petitioner had earlier also filed objections which were dismissed vide order dated 22.04.2022 and subsequently the present objections were filed. It is argued that the executing court has rightly dismissed the objections as the executing court cannot go beyond the final decree which has attained finality. It is further argued that the specific directions given in the final decree are in accordance with law and the division made is in the best interest of all the parties. It is submitted that the petitioner is unnecessarily trying to delay the proceedings by filing one frivolous objection after another.

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

5. It is not in dispute that the trial Court had first passed a preliminary decree dated 18.11.2016 and thereafter, had passed ex-parte final decree dated 20.07.2018. The relevant portion of the final decree

dated 20.07.2018 is reproduced as under: -

“ xxx xxx xxx

5. *I have heard the Ld. Counsel for the applicants and with their assistance carefully perused the case file.*

6. ***The present application has been filed by the applicants for passing final decree. Perusal of the file further shows that original suit was filed by the respondents/plaintiffs against six applicants/defendants and the same was decreed by the Learned Predecessor of this Court vide judgment and decree dated 18.11.2016 and preliminary decree was passed holding the respondents/plaintiffs to be owner in possession of 1/3rd share, applicants/defendants no.1 to 3 being the LR's of Gural Singh to be owners in possession to the extent of 1/3rd share and applicants/defendants no.4 to 6 being the LR's of Jaspal Singh to be owners in possession to the extent of 1/3rd share in the suit property i.e. House no.5362 as detailed in the head note of the application. The Local Commissioner who was appointed by the Court to prescribe the mode of partition has opined that applicants no.1 to 3 are entitled to 1/3rd share in equal portions and it is proposed that area i.e. 7 feet 1 inch front and 6 feet 8 inch from back, which shown in the red colour in the map be given to them. It is proposed that Applicants no.4 to 6 who are entitled to 1/3 share in equal part be given area 7 feet 1 inch front and 6 feet 8 inch from back which shown in the green colour in the map. It is proposed that Respondents who are entitled to 1/3 share in equal share be given area 7 feet 1 inch front and 6 feet 8 inch from back which shown in the blue colour in the map. The Local Commissioner also reported that house is constructed by bricks with mud and same is fine plastered by cement, so the value of the constructed area is of ₹40,000/-. As per the report submitted by the Local Commissioner, the said portion earmarked for the applicants/defendants comes out to be of same area.***

7. ***The report given by the local Commissioner has remained un rebutted and unchallenged. As mentioned above the respondent number 1 who is also 1 of the legal representative of the deceased***

respondent number 2 has not opted to contest the claims of the applicants despite he initially appeared in the court. As such the report given by the local Commissioner is accepted and the mode of partition is suggested by the local is made the basis of the final partition.

8. *In view of the aforesaid circumstances, exparte final decree is hereby passed. Site plan dated 30/5/2018 submitted by the Local Commissioner Ms. Baljeet Kaur Advocate be made part of the decree. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room within time prescribed as per rules, after due compilation.*

Pronounced in open Court on 20.07.2018.”

A perusal of the above would show that the property in question was directed to be partitioned after giving specific measurements. The present petitioner who was respondent No.1 in the said proceedings did not opt to contest the claim of the applicants/counter claimants although he had initially appeared in the Court. On the basis of the facts and circumstances of the case, the said final decree was passed. It is not in dispute that the petitioner filed an application under Order 9 Rule 13 CPC for setting aside the said ex-parte final decree but the same was dismissed. It is also not in dispute that earlier the petitioner had filed objections before the executing court, which were dismissed on 22.04.2022. The subsequent objections filed by the petitioner were also dismissed by the executing court vide impugned order dated 03.12.2022.

6. It is not open to the petitioner to state that the partition as ordered by the final decree is not reasonable, inasmuch as, apart from the fact that the said aspect had been disputed by the respondents who had

stated that the partition ordered by the final decree is in accordance with law and is in the best interest of all the parties, the said mode of partition had been duly finalized in the final decree which had attained finality. The application filed by the petitioner under Order 9 Rule 13 CPC has been dismissed. It is the duty of the executing court to execute the final decree. It is not the case of the petitioner that the orders passed by the executing court are contrary to the final decree. Once the final decree had attained finality, then, it is not open to the petitioner to argue that the partition as detailed in the final decree is not reasonable. The earlier objections filed by the petitioner were dismissed vide order dated 22.04.2022 and the petitioner had thereafter filed present objections, which have also been rightly dismissed by the executing court vide the impugned order. It is apparent that the petitioner is trying to delay the execution of the final decree.

7. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed and deserves to be upheld and the revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

July 16, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes