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

(110)

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Date of decision: - 22.08.2025

Dalbir @ Dalbir Singh Saini**....Petitioner****Versus****Kanwal Singh and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Aditya Jain, Advocate, and
Mr. Rajat Singla, Advocate
for the petitioner.

Mr. Sandeep Kumar Sharma, 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 29.09.2022 (Annexure P-11) passed by the Civil Judge (Senior Division), Rohtak separating the share of the petitioner to the extent of 1/6th share towards the eastern side.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that in the present case, although a preliminary decree had been passed holding that each of the six brothers i.e. petitioner and respondents No.1 to 5, were entitled to 1/6th share of the suit property but while passing the impugned



order dated 29.09.2022 and giving the eastern side of the property to the petitioner to the extent of $1/6^{\text{th}}$ share, the statement of the petitioner dated 29.09.2022 (at page 91 of the paper-book) to the effect that he does not want to separate his share from his five brothers, had not been taken into consideration by the trial Court in the proceedings for passing the final decree and thus, has submitted that the order dated 29.09.2022 is not in accordance with law and deserves to be set aside.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

3. Learned counsel for the respondents, on the other hand, has submitted that the present petitioner is in possession of the suit property and has thus done every act to delay the proceedings. It is further submitted that the suit filed by respondent No.1/Kanwal Singh (one of the brothers) for possession by way of partition and permanent injunction and also for rendition of accounts was instituted in the year 2008 and a preliminary decree was passed on 08.01.2015 and the respondents, who are the other five brothers, were held entitled to $1/6^{\text{th}}$ share each, thus, totaling $5/6^{\text{th}}$ share. It is submitted that since the petitioner was in possession of the whole premises, thus, he filed an appeal against the said judgment and decree, which was dismissed on 13.03.2018 and further the regular second appeal filed before the High Court was also dismissed on 17.01.2019. It is argued that in spite of final adjudication of the shares of the parties, still the petitioner did not give possession of $5/6^{\text{th}}$ share to his other five brothers, thus, the application dated 03.10.2018 for passing a final decree of partition was filed. In the said proceedings also the



petitioner made every effort to delay the same and the trial Court, after considering the fact that neither of the parties wanted to auction the property, observed that the present petitioner be given 1/6th share on the eastern side. It is further submitted that the property of the wife of the petitioner is adjacent to the share to which the present petitioner had been held entitled to and has also referred to the site plan regarding the same. The said site plan which is undisputed is taken on record and has been marked as 'Mark A'. It is argued that in the said circumstances, the best possible method of partition has been adopted. It is further argued that all the five brothers had given a joint statement that they wanted to carry out the work together and being fair to the petitioner, they had even consented to the petitioner taking his 1/6th share adjacent to the property of his wife-Santosh. It is submitted that the statement of the petitioner to the effect that he does not want to separate his share from his five brothers made on 29.09.2022 is apparently malafide and that for all these years the petitioner had been in possession of the entire property and the petitioner is neither ready to jointly work with the respondents/brothers nor wants the property to be auctioned nor has fairly agreed to carry out the partition which in the circumstances is best suited for the petitioner also. It is further submitted that in case the petitioner had wanted to remain in joint possession with the brothers, then, at the time of initiation of the dispute in the year 2008 or at least when the matter was finally adjudicated by this Court on 17.01.2019, he should have offered 5/6th possession to the respondents-brothers, which had not been done. It is



also submitted 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.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order dated 29.09.2022 (Annexure P-11) 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. The present case depicts unfair conduct of one brother qua the other five brothers on account of the fact that he is in possession of the entire property and wishes to retain the possession of the same. It is not disputed that the suit for possession by way of partition and permanent injunction was filed on 23.04.2008 in which all the six brothers were parties including the present petitioner. It is also not disputed that after due contest, a preliminary decree for partition of the suit property was passed on 08.01.2015 and each of the brothers were held entitled to 1/6th share of the property in question. Although, the judgment of the 1st Appellate Court in appeal as well as of the High Court in the regular second appeal have not been annexed but the factum of the appeal of the petitioner having been dismissed on 13.03.2018 and the regular second appeal also having been dismissed on 17.01.2019 has not been disputed before this Court. It is also not disputed that the judgment and decree dated 08.01.2015 had attained finality. The petitioner alone



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however continued to enjoy possession and did not choose to offer or part with 5/6th possession to his brothers. Being left with no other option, the application for final partition was filed on 03.10.2018. Even the said proceedings had been delayed for a period of more than 3½ years and still the petitioner alone enjoyed the possession of the entire premises.

6. On 29.09.2022, respondents No.1 to 5 had made the statement/statements which are reproduced herein below: -

*“Statement of Kanwal Singh s/o Chandgi Ram age 73 years,
r/o Rohtak.*

On SA

Stated that share of mine and JD No.2 to 5 pertaining to shop in dispute be fixed on the western side.

RO & AC

*Sd/- Kanwal Singh
Sd/-29/9/22*

*Sd/-
ACJM RTK*

Statement of Dilbag s/o Chandgi Ram age 58

Statement of Jai Singh s/o Chandgi Ram age 71

Statement of Jai Pal s/o Chandgi Ram age 64

Statement of Pankaj s/o Dariyao Singh 37

All r/o Rohtak.

Sh. Rahul, Advocate counsel for respondents No.2 to 5.

Stated that our share pertaining to shop in question be fixed on the western side with decree-holder Kanwal and there is no objection if the share of Dalbir be fixed with Santosh w/o Dalbir.

RO & AC

*Sd/- Jai Pal
Sd/- Dilbag Singh
Sd/- Pankaj
Sd/- Jai Singh*

Sd/- Rahul

*PH/6175/2021”*

A perusal of the above statements would show that five brothers, who are respondents No.1 to 5 and had 5/6th share, had stated that the share pertaining to shop in question be given to them on the western side and they had no objection in case the present petitioner is given share on the eastern side adjacent to the property of Santosh who is the wife of the petitioner. It is not disputed before this Court that adjacent to the share given to the petitioner, the property of the wife of the petitioner is situated and thus, in the said circumstance, the partition done by the local commissioner which had been accepted by the trial Court is in the best interest of all the parties, more so, the petitioner. On a pointed query raised by this Court as to whether the petitioner wishes to take the western side of the property to the extent of 1/6th share, it has been fairly submitted before this Court that the property on the eastern side which has been given to him is more advantageous to the petitioner than the property on the western side. It is also not disputed before this Court that none of the parties wish to auction the property in question. The trial Court, after having considered all aspects, came to the conclusion that only one option was left and thus, vide order dated 29.09.2022, divided the property by giving the petitioner 1/6th share on the eastern side, abutting the property of wife of the petitioner and by giving the remaining 5/6th share to the other five brothers. However, in spite of the said order being absolutely in accordance with law, the petitioner has challenged the same in order to further retain possession.



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7. The reliance sought to be placed upon the statement dated 29.09.2022 (page 91) made by the petitioner is apparently malafide. The statement of the petitioner is reproduced herein below: -

*“Statement of Dalbir Singh s/o Sh. Chandgi Ram age 57 year
r/o Chaman Pura Rohtak JD No.1.*

On SA

*Stated that I do not want to separate my share from my five brothers,
hence, my share also be kept intact/ joint.*

RO & AC

Sd/- Dalbir Singh Saini

*Sd/- Manglesh Kumar Choubey
Civil Judge (Sr. Divn.),
Rohtak”*

8. After 14 years of contesting and having enjoyed the possession and also having fought with the other five brothers without offering them to jointly work with him at any stage, the petitioner had cleverly made the statement that his share be kept intact knowing fully well that the same could not have been done. Counsel for respondents No.1 to 5 has submitted that the petitioner never offered the other brothers to jointly occupy the property in question and has rather been denying the share of the other five brothers. Nothing has been shown to this Court as to whether from the year 2008 up to the year 2022 any offer had been made by the petitioner to the other brothers to jointly work. Thus, it is apparent that the said statement has been made without a bona-fide intent and only to further delay the proceedings. Moreover, at any rate, the respondents No.1 to 5 do not wish to work jointly with the



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petitioner on account of his act and conduct. In the said circumstances, the partition carried out by the impugned order dated 29.09.2022 is the best possible partition, which could have been done by metes and bounds. This Court has also seen the undisputed site plan which has been produced and marked as 'Mark A' which further shows that the petitioner had been given possession of 1/6th share of the property in question, as per his share, which is adjacent to the property of his wife and thus, in the said circumstances, is the best mode of partition, which is possible in the present case.

9. The Hon'ble Supreme Court in the case of “*Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*”, *reported as (2010) 8 Supreme Court Cases 329*, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to

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maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

10. Keeping in view the above, this Court is of the opinion that the impugned order dated 29.09.2022 (Annexure P-11) does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

11. Pending application(s), if any, stand disposed of in view of the above order.

August 22, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes