



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

EFA-7-2024

Date of decision: 07.01.2025

RISHI KARAN KAKAR

..Appellant

Versus

PROMILA KAKAR AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

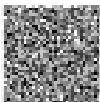
Present: Ms. Ritam Aggarwal, Advocate for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The present appeal has been filed to assail the correctness of Executing Court's order passed on 01.10.2014. The petitioner herein is respondent No.1's son and brother of respondent No.2 and 3. In other words, respondent No.1 is the mother, whereas, respondent No.2 and 3 are petitioner's sisters. In a pending suit, the parties entered into a settlement, which led to execution of a deed of settlement dated 17.04.2014. The petitioner apart from 40% share in the disputed house was allotted an industrial shed bearing Plot No.374, two flats at Dwarka and Nand Nagri, Delhi and 50% share in the rest of the properties. With respect to amount lying in PPF account, the parties agreed to divide it equally. With respect to house in question, the parties agreed that the share of the petitioner would be 40%, whereas, the share of respondents would be 60%. He was given liberty to construct second floor for his own use and occupation, which has already been constructed. The dispute is with regard to the following clause in the agreement:-

"The office in house shall be exclusively for the use and occupation of First Party, while munshi room shall be used exclusively by second party. Front lawn shall also be shared by both parties. A small pantry shall be got constructed with the office for first party by Second party.

Rest of the house shall be used as per present situation. The first party entire first floor except one room with bathroom



alongwith temple room and back terrace on the first floor towards main road of Sector 15/16 Sector.”

2. The petitioner claims that he has not been handed over the possession of first floor as agreed, whereas, the Executing Court has found that the disputed portion consists of mezzanine floor and not the first floor.
3. Learned counsel for appellant contends that despite opinion of two experts, the Executing Court has come to a conclusion that the disputed portion is mezzanine floor and not the first floor. She further submits that the Executing Court cannot refuse to implement the decree.
4. This Court has considered the submissions of learned counsel for the appellant.
5. The Executing Court is required to implement the decree as it exists. The appellant claims the possession of particular portion of the first floor, which is disputed by the respondents. The appellant’s share in the disputed property is 40%. The Executing Court cannot be expected to pass an order in absence of clear stipulation in the terms of settlement, which formed part of the decree. The opinion of the experts is not binding on the Courts because the Court is final arbiter. The appellant has the liberty to seek 40% of his share by filing a suit for partition by way of sale of the property because physical division of the property is not permissible in Chandigarh. The share to the extent of 40% in the disputed property is not in dispute.
6. Keeping in view the aforesaid facts, no ground to interfere is made out.
7. Dismissed accordingly.

January 07th, 2025

(ANIL KSHETARPAL)
JUDGE

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