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

(123)

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Date of Decision: - 09.07.2025

Vidya Sagar

....Petitioner

Versus

Angelina Gill and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Imran Ahmad Ali, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC praying for setting aside of impugned order dated 19.05.2025 (Annexure P-15), passed by the Civil Judge (Junior Division) Chandigarh, whereby an application filed by the petitioners seeking dismissal of the execution filed by respondents No.1 to 6 has been dismissed.

2. Learned counsel for the petitioner has submitted that a perusal of the judgment and decree dated 20.01.2020 would show that no preliminary decree has been passed and thus, subsequently no final decree could have been passed. It is further submitted that against the judgment and decree dated 20.01.2020, an appeal has been filed by the petitioner on 04.03.2020 and although the same was dismissed in default on 07.12.2022 but a restoration application has been filed by the petitioner



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and the said application is pending. It is stated that in the said circumstances, the impugned order vide which the application filed by the petitioner for dismissing the execution has been dismissed, is illegal and against law and deserves to be set aside and the execution proceeding deserves to be dismissed.

3. This Court has heard learned counsel for the petitioner 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.

4. It is not in dispute that respondents No.1 to 6 had filed a suit against the present petitioner and four other defendants and the present petitioner was arrayed as defendant No.1. In the said suit, the following prayers had been made: -

“Suit for declaration to the effect that Will dated 17.02.2014 allegedly executed by Late Sh. Mehar Chand son of late Sh. Genda Ram, is a forged and fabricated document having no effect on the rights of the plaintiffs qua immovable properties i.e. House No.729, Sector 20, Panchkula & House No.4782-B, Sector 38-West, Chandigarh and 4 Killas land belonging to Late Sh. Mehar Chand comprised in Khewat No.210, Khatauni No.284, Khasra No.18//1 (198-0), 22(8-0), 23(8-0), 24(8-0), 25//14(4-1), kitta 5, total 36 Kanals 14 Marlas situated in Village Panjali, Sub- Tehsil Saha, District Ambala, Haryana and land comprised in Khewat No.210, Khatauni No.284, Khasra No.32//12 (8-0), 13(8-0), 14(8-0), 15//13(6-0), kitta 4, total 27 Kanals 6 Marlas situated in Village Panjali, Sub-Tehsil Saha, District Ambala, Haryana as per jamabandi for the years 2001-2012 and all other movable properties of late Sh. Mehar Chand son of late



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late Sh. Genda Ram, with consequential relief that plaintiff No.1 & 2 are entitled to 1/4th share each being Class-I legal heirs of Late Sh. Mehar Chand and plaintiffs 3 to 6 are entitled to 1/16th share each out of above properties of Late Sh. Mehar Chand being Class-I legal heirs of Late Sh. Mehar Chand, on the basis of natural succession and inheritance.

And

Suit for partition and separate possession of House No.729, Sector 20, Panchkula & House No.4782-B, Sector 38-West, Chandigarh belonging to Late Sh. Mehar Chand by meets and bounds in favour plaintiffs and defendant No.1 as per their shares, and in case partition is not feasible or permissible, the properties may be put to open auction and sale proceeds may be distributed amongst plaintiffs and defendant No.1 as per their shares.

And

Suit for permanent injunction restraining defendant No.1 from creating any third party interest in any manner in respect of above immovable properties of late Sh. Mehar Chand.

And

Suit for permanent injunction restraining defendant No.2 to 4 from transferring above immovable properties of late Sh. Mehar Chand in the name of defendant No.1.

And

Suit for rendition of accounts for the illegal use of House No.729, Sector 20, Panchkula and above land situated in Village Panjail, Tehsil Saha, District Ambala, Haryana belonging to late Sh. Mehar Chand, by defendant No.1 with effect from the date of death of late Sh. Mehar Chand.

And

Suit directing defendant No.1 to pay damages at the rate of Rs.500/- per day for unauthorised/illegal use and occupation of Dwelling No. 4782-B, Sector 38-West, Chandigarh from the date of filing of present suit till realisation to the plaintiffs as per their shares out of the estate of late Sh. Mehar Chand.

And



Suit for recovery of Rs.4000/- along with calculated @ 9% per annum w.e.f. the date of withdrawal of said amounts by defendant No.1 from the bank accounts of late Sh. Mehar Chand along with future interest @ 9% per annum till realisation in favour of plaintiffs as per their shares out of the estate of late Sh. Mehar Chand, and also for recovery of such amount which may be subsequently found to have been withdrawn by defendant No.1 from the accounts of late Sh. Mehar Chand.

And

Suit for mandatory injunction directing defendant No.5 to pay 1/4th share of rent to plaintiffs 1 & 2 and 1/16th share to plaintiffs 3 to 6 each out of the agreed rent of Rs.10,000/- or in the alternative to deposit the entire monthly rent in this Hon'ble Court.

A perusal of the above prayers would show that one of the prayers made in the suit was for partition and separate possession of House No.729, Sector 20, Panchkula and House No.4782-B, Sector 38-West, Chandigarh. The said suit was contested by the defendants.

5. The trial Court vide judgment and decree dated 20.01.2020 decreed the said suit. A perusal of the said judgment dated 20.01.2020 would show that several issues were framed by the trial Court, which included issue No.3, which was with respect to the fact that as to whether the plaintiffs were entitled to the relief of partition as prayed for or not. The said issue along with issues No.1 to 4 and 10 were considered together and it was observed that the plaintiffs were entitled to relief of declaration that Will dated 17.02.2014 propounded by the present petitioner/defendant No.1 was illegal, null and void and plaintiffs Nos.1 and 2 were held entitled to 1/4th share each in the property owned by late Sh. Mehar Chand and plaintiffs No.3 to 6 were held entitled to 1/16 share



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each in the property owned by late Sh. Mehar Chand and defendant No.1 i.e. petitioner was held entitled to 1/4th share in the property owned by late Sh. Mehar Chand. In the relief column, it was specifically mentioned that the suit of the plaintiffs had been decreed. The relevant portion of the said judgment and decree is reproduced herein below: -

“xxx xxx xxx

7. *From the pleadings of both the parties, following issues were framed on 28.11.2016:-*

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP*
2. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP*
3. ***Whether the plaintiff is entitled to the relief of partition as prayed for ? OPP***
4. *Whether Will dated 17.2.2014 is forged and fabricated document ? OPP*
5. *Whether the plaintiff is entitled to the relief of rendition of account ? OPP*
6. *Whether the plaintiff is entitled to the relief of damages as prayed for ? OPP*
7. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP*
8. *Whether the present suit is not maintainable ? OPD*
9. *Whether the plaintiff has not come to the court with clean hands ? OPD*
10. *Whether Sh. Mehar Chand had executed Will dated 17.02.2014? OPD*
11. *Whether the present suit is not maintainable as per provision of Section 67 of Haryana Housing Board Act, 1971 ? OPD*
12. *Relief.*

xxx xxx xxx

22. *Therefore, in view of above-said discussion, plaintiff has been able to prove his case by leading cogent and convincing*



*evidence. Plaintiff is held entitled to relief of declaration that Will dated 17.02.2014 is illegal, null and void. Further, defendant No.1 is restrained from creating any third party interest in respect of entire immovable property of late Sh. Mehar Chand and defendant no. 2 to 4 are restrained from transferring the entire immovable property in favour of defendant no.1. **Further, plaintiff No.1 and 2 are entitled to 1/4th share each in the property owned by late Sh. Mehar Chand and plaintiff No. 3 to 6 are entitled to 1/16 share each in the property owned by late Sh. Mehar Chand and defendant no.1 is entitled to 1/4th share in the property owned by late Sh. Mehar Chand. Accordingly all these issues are is decided in favour of plaintiffs and against the defendants.***

xxx xxx xxx

RELIEF:

25. *In view of my findings on the aforesaid issues, suit of the plaintiffs succeeded and the **same is hereby decreed** with no order as to cost. Decree-sheet be prepared accordingly. File be consigned to the record room after due compliance.*

*Pronounced in Open Court
Dated: 20.01.2020*

*(Saloni Gupta)
Civil Judge (Junior Division),
Chandigarh”*

A perusal of the above would show that since the suit of the plaintiffs had been decreed, thus, all the prayers including the prayer of partition had been allowed. In para 22 of the said judgment, specific declaration with respect to share of each parties had been detailed. Although, it is the case of the petitioner that he had filed an appeal against the same, but it has been fairly submitted by the learned counsel for the petitioner that the said appeal was dismissed in default on 07.12.2022. Thereafter, although an application for restoration of the said appeal has been filed, but neither the same has been restored till date nor is there any



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interim order in favour of the present petitioner, much less, interim order staying the further proceedings of final partition or the execution.

6. It is not in dispute that thereafter the trial Court after hearing all the parties concerned including the present petitioner/defendant No.1 had passed a final decree dated 05.05.2023. The relevant portion of the said final decree is reproduced herein below: -

“Further, as regard to the partition of the above said properties situated at Panchkula and Chandigarh the applicants/plaintiffs have placed on file rules of Chandigarh and Haryana whereby fragmentation of properties by meets and bounds is not possible and Court is left with only option to auction the same. Accordingly both the properties situated at Panchkula and Chandigarh are liable to be auctioned and the share of the auctioned proceedings will be distributed amongst the legal heirs of the Mehar Chand as per the judgment and decree dated 20.01.2020 passed by this court.

Therefore, final decree in respect of the suit properties i.e. #729, Sector 20, Panchkula and #4782, Sector 38 West, Chandigarh is passed to the effect that suit properties be auctioned and the sale proceed of the same will be divided amongst the parties as per the share in the preliminary decree. None of the parties have disputed regarding their share in the preliminary decree. The parties to the present application are left at liberty to take part in the Court auction proceedings if they so desire. Final decree be prepared accordingly.

File be consigned to record room after due compliance.

ANNOUNCED IN OPEN COURT:

Dated: 05.05.2023

(Bharat)
Civil Judge (Junior Division)
Chandigarh. UID-HR045”

A perusal of the final decree would show that after taking



into consideration the fact that with respect to the properties situated at Panchkula and Chandigarh, fragmentation of properties was not allowed and thus, two houses were, as per settled law, required to be auctioned and the sale proceeds were ordered to be divided amongst the parties as per the shares given in the judgment and decree dated 20.01.2020. On a pointed query raised by this Court, learned counsel for the petitioner has submitted that an appeal against the said judgment and decree has been filed but there is no interim order in favour of the petitioner even in the said proceedings.

7. Once there is a specific order in the final decree for auction and for sale and there is no stay on the execution of the said judgment and decree, then, it is incumbent upon the executing Court to proceed further in the matter and to carry out the auction and the sale. In such a situation, an application filed by the petitioner for dismissal of the execution petition is baseless and completely misconceived. The Executing Court is duty bound to execute the final decree which has been passed between the parties.

8. Subsequent to the passing of the order dated 19.05.2025, an order dated 23.05.2025 (Annexure P-16) has been passed by the Executing Court for auctioning the properties in question and the auction is stated to have been held on 10.07.2025. The said order is also in pursuance of the final decree passed and the said order dated 23.05.2025 (Annexure P-16) has not been specifically challenged in the present revision petition. Thus, the revision petition deserves to be dismissed on

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the said ground also and the auction proceedings cannot be interfered with by this Court.

9. The argument raised by learned counsel for the petitioner to the effect that the decree passed was not a preliminary decree has been rightly rejected by the Executing Court vide order dated 19.05.2025 by observing that there was a specific prayer with respect to partition and specific issue i.e. issue No.3 was framed regarding the same and in para 22 of the said judgment, there was a specific declaration with respect to the respective shares of the parties and since the suit had been decreed, thus, all the prayers in the suit had been allowed. Moreover, at any rate, once subsequent to the passing of the decree dated 20.01.2020, a final decree dated 05.05.2023 has been passed with a specific direction to carry out the auction and the sale of the property and there being no stay on execution of either of the said two decrees, thus, holding of auction proceeding is in accordance with law.

10. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order does not call for any interference and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

July 09, 2025*naresh.k***(VIKAS BAHL)
JUDGE**Whether reasoned/speaking?
Whether reportable?Yes
Yes