

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4436 of 2011 (O&M)
Date of Decision: 25.3.2015.

Harpal Singh (deceased) through LRs

.....Petitioner

Versus

Harmohinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. N.R.Dahia, Advocate
for the petitioner.

Mr. Sanjiv Bansal, Advocate
for respondents No. 1 to 3.

SABINA, J.

Harpal Singh (since deceased) had filed this petition under under Article 227 of Constitution of India challenging the order dated 18.5.2011 (Annexure P-1) whereby objections filed by him against the report of the Local Commissioner, were dismissed.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

Harpal Singh (since deceased) had filed suit for declaration. The suit filed by the Harpal Singh (since deceased) was partly decreed vide judgment/decreed dated 7.3.2008. It was held that the order dated 17.12.2004 was illegal, null and void and Harpal Singh (since deceased) was entitled to get his name incorporated as an owner to the extent of 1/4th share in the suit property. Counter claim filed by defendants No. 3 to 5 was allowed

and it was ordered that the house in dispute be sold in open auction. Petitioner filed an appeal against the said judgment and decree and the Appellate Court vide judgment/decreed dated 16.9.2008 (Annexure P-2) partly accepted the appeal and held that the order dated 17.12.2004 passed by the Estate Officer, was null and void. The finding of the Trial Court that defendants No. 3 to 5 could sell the property in open auction and get the proceeds divided amongst themselves equally, was reversed. Rather, a preliminary decree for partition by metes and bounds, was passed holding that the petitioner and the respondents were owners to the extent of 1/4th share each. Thereafter, defendants No. 1 to 3 approached the Court for passing of the final decree. During the said proceedings, Local Commissioner was appointed by the Court. The Local Commissioner submitted the report dated 25.3.2010 (Annexure P-7) and the same reads as under:-

- “1. That I was appointed as Local Commissioner by this Hon'ble Court on dated 17.2.2010 to inspect the dwelling H.No. 3088, Sector 21-D, Chandigarh and to submit the report along with rough site plan attached.*
- 2. That as per the terms of reference, I inspected the said site on dated 6.3.2010 after serving notice to the concerned parties and their counsels.*
- 3. That the dwelling house as per my opinion that this house cannot be partitioned by metes and bounds that the dwelling house constitute four rooms, drawing room, store room, kitchen, Harmohinder staying at the dwelling house in Room No. 3. Further it is submitted that Room No. 1 which was locked and its keys were in possession*

of Harpal Singh. Similarly room No. 2 which was also locked and its keys were possession of Devinder Singh, room No. 4 is Shri. Guru Granth Sahib placed over there. That the drawing room store, room, kitchen, Varanda and open site on either side used kept for common use. I have prepared the rough site plan which is annexed.”

Harpal Singh (since deceased) filed his objections to the said report. Defendants No. 1 to 3 filed their reply to the objections. The learned Court observed that in view of the report submitted by the Local Commissioner, the dwelling unit in question could not be partitioned by metes and bounds. Although, the Appellate Court vide Annexure P-2 had held that the house in question be partitioned by metes and bounds but during the proceedings for passing of the final decree, it transpired that it would not be possible to partition the house in question by metes and bounds.

In view of the facts and circumstances of the present case, the impugned order dated 18.5.2011 (Annexure P-1) appears to be a just and fair order and calls for no interference.

Dismissed.

**(SABINA)
JUDGE**

March 25, 2015
Gurpreet