

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6191 of 2014 (O&M)

Date of decision: 21.05.2015

Sukhbir Singh

... Petitioner

versus

Joginder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Keshav Partap Singh, Advocate for the petitioner.

Mr. Sanjay Kaushik, Advocate for the respondents.

K.Kannan, J.

In a suit for partition before a decree was passed, a statement was filed contesting the petitioner's claim. The suit however did not go for a contested trial but resulted in an ex-parte decree when the defendant was set ex-parte. After the pre-liminary decree was passed, the plaintiff had filed an application for passing a final decree. The trial Court dismissed it holding that the plaintiff was not even shown to be in possession and the contentions raised in the written statement as regards the non-partibility in the manner sought for by the plaintiff was justified.

I find the whole exercise undertaken by the Judge to be erroneous. The Presiding Officer had done an unusual activity of visiting the property for assessing the property in possession of the respective parties after the decree was passed to render the decree literally inoperative by dismissing the application for passing a final decree. The action of the Presiding Officer is untenable and unbecoming of a person trained in law. He ought not to have done it personally to decide on partibility and otherwise after the decree was passed. The final decree is a manner of carrying through the directions contend in the pre-liminary decree that ascertains the particular share

that the plaintiff shall be allotted. There shall be no further enquiry undertaken by a judge whether the properties could have been directed to be divided or not or where there is any property left out or some items were required to be added. All this could come only before the passing of decree. The Advocate Commissioner or Local Commissioner is appointed at the final decree stage and that too before the passing of a decree only to assess the manner of how the property can be divided and how the equities between the parties could be adjusted in the manner of allocation. The Court cannot and consequently Commissioner cannot decide on whether a decree could have been passed in the first place or not. That is simply outside the ken of enquiry in the final decree proceedings. The objection to the final decree could have been therefore regarding the partibility of properties and the identity of properties in the manner said to be done by the judgment debtor. The order passed by the Court below is legally untenable and erroneous and it is set aside. The application for passing of final decree shall stand restricted for only a consideration of manner of allotment of the properties in the suit to the extent to which the preliminary decree accords the share to the plaintiff. If the defendant also wants his own property to be divided it is open to him to seek for preliminary decree which is in consonance with the share already found for the respective parties in the judgment or at the time when the preliminary decree was passed. The Court passing a final decree for the plaintiff has a power also to pass a final decree for the defendant as well. But it must be in consonance with the preliminary decree already passed in favour of the plaintiff which has become final. There cannot be a preliminary decree or a final decree for the a defendant that will annihilate or abrogate the preliminary decree already passed in favour of the plaintiff.

The civil revision petition is allowed and the matter is remitted to the learned trial Judge for disposal of the application of final decree in conformity with the pre-liminary decree already passed.

The Court shall not distract itself with objections by making any variance to the decree that has become final and binding between parties.

(K.KANNAN)
JUDGE

21.05.2015
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