

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

CR No.97 of 2015 (O&M)
Date of Decision: 29.01.2015

Raj Kumar and another

. . . .Petitioners

Versus

Sant Ram and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ramesh Hooda, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

CM Nos.2001-02-CII-2015

Applications are allowed as prayed for.

CR No.97 of 2015

This petition is directed against the order dated 7.11.2014 by which application filed by the petitioners for leading additional evidence by way of examination of Raj Kumar and Angrej Singh has been dismissed.

The facts given to me are that in a suit for partition, preliminary decree was passed. The Local Commissioner was appointed, who prepared the report. The petitioner Raj Kumar filed objections against the report of Local Commissioner, which was dismissed and final decree of partition was passed on 4.1.2003. Other objections were filed against the decree of Raj Kumar, Devi Singh, Krishana Devi, Hari Ram, Ram Pal and Kidar Singh. The

objections were dismissed and they preferred six appeals which were allowed by the Appellate Court on 23.11.2004 and the order dated 4.1.2013 by which the objections were dismissed was set aside and the case was remanded back to the trial Court for fresh disposal after giving an opportunity to lead evidence to the appellants in those appeals.

The application for additional evidence filed by the petitioners was dismissed by the Court below on the ground that while passing the order dated 23.11.2004, the appellate Court had granted opportunity only to the appellants in all the six appeals, who had filed objections and therefore, there was no right given to the present petitioners for that purpose. It was also observed that one of the objectors Raj Kumar had already filed an application to examine the present petitioners as his witnesses in support of his objection but the said application was dismissed on 16.9.2013 and against that order, revision petition filed by Ram Kumar was also dismissed by this Court. It is submitted that the application filed by the petitioners was not decided on merits, therefore, they could still be examined as witnesses in additional evidence.

I have heard learned counsel for the petitioners and after examining the record, am of the considered opinion that there is no error in the order of the Court below because the objections filed by the petitioners against the report of Local Commissioner was dismissed vide order dated 4.1.2013 but they did not file any appeal against the said order rather the appeals were filed by six other persons, which were allowed on 23.11.2004 and the case was remanded back to the trial Court for its fresh disposal giving an opportunity to them to raise objections to the report of the Local

Commissioner. Once, the petitioners have not been granted any liberty by the Appellate Court as they had not filed the appeal, they have no right to lead additional evidence in respect of their objections. The arguments raised by learned counsel for the petitioners that they are the brothers of Hari Ram, who had filed appeal before the Appellate Court, who had remanded the case back, does not support the case of the petitioners because the objections were filed by the individuals and not by members of the family.

In view thereof, I do not find any merit in the present petition and hence, the same is hereby dismissed.

29.01.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**