

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 55 of 2014

Date of Decision: March 10, 2015

Dalip Singh and others

.....Petitioners

Vs.

Ram Dhan

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Jagdish Manchanda, Advocate
for the petitioners.

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M.M.S. BEDI, J. (ORAL)

The dispute amongst five brothers is pertaining to the partition of co-owned 9 kanals 4 marlas of land. As per the decree, they are entitled to separate possession. The Executing Court vide order dated September 3, 2014 had proposed a mode of partition directing that five different portions of the entire suit land measuring 9 kanals 4 marlas in equal shares, keeping in mind construction already made on the spot, should be made. The Additional District Judge on an appeal filed by one of the brothers defendant- respondent Ram Dhan, has with an objective to avoid further litigation between the parties regarding their respective shares, further

directed the Sadar Kanungo to propose the fresh mode of partition, observing as follows:-

“In order to avoid further litigation between the parties regarding their respective shares, the Ld. Trial Court has directed the Sadar Kanungo to propose a fresh mode of partition by showing five different portions of the entire suit land measuring 9 K-4M in equal shares keeping in mind the construction already made at the spot. In view of the law laid down the Local Commissioner ought to have suggested mode of partition by metes and bounds i.e. by making different assessment of the value of the land. Therefore, in addition to the direction to the Local Commissioner to suggest five equal portions of the land he must be directed to draw final mode of partition after taking into consideration the value of the land too. Order under challenge stands amended to this extent. The Ld. Trial Court is directed to give fresh direction to the Local Commissioner accordingly.”

Learned counsel for the petitioners submits that since the respondent has raised construction on a area beyond the share of the defendant- respondent judgment debtor as such there is apprehension that on

the basis of construction raised beyond the share area, the defendant-respondent might claim excessive rights.

I have heard learned counsel for the petitioners and I am of the opinion that while selecting the mode of partition it is always relevant to consider the value of the construction on the land and the respective possession of the parties, besides the convenience of the parties before any order for partition by metes and bounds is passed. It is expected that the Revenue Officer who has been deputed to propose fresh mode of partition is aware of the relevant law and instructions pertaining to the valuation. No serious prejudice appears to have been caused to the petitioners at this stage as neither any unnecessary benefit to the prejudice of the petitioners has been granted to the defendant- judgment debtor/ respondent nor any loss has been caused on account of the observations made by the learned Additional District Judge vide order dated October 21, 2014.

Petition is disposed of without prejudice to the rights of the parties to bring to the notice of the concerned Revenue Officer the various factors affecting the value of the land.

March 10, 2015
sanjay

(M.M.S.BEDI)
JUDGE