

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4263 of 2010 (O&M)
Date of Decision.17.09.2015

2. C.R. No.6299 of 2010

Om Parkash @ Om Singh s/o Sh. Sardara SinghAppellant

Versus

Rajbir and othersRespondents

Present: Mr. Pankaj Middha, Advocate
for the appellant.

Mr. Sudhanshu Makkar, Advocate
for respondent Nos.1 to 5, 12 to 14.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. Delay of 550 days in filing the appeal is condoned.
2. The regular second appeal in RSA No.4263 of 2010 is at the instance of the defendants who are aggrieved about preliminary decree passed in suit for partition by persons admittedly co-sharers of the property and the contention in defence was that there had been an oral partition and the suit for partition was not maintainable. There was also another objection that the partition was with reference to agricultural lands and the appropriate remedy will be only under the Punjab Land Revenue Manual before the revenue authorities. The Court rejected the contention regarding the oral partition and proceeded to grant a preliminary decree ascertaining the shares of the respective

parties.

3. If there had been an objection taken to the suit for partition on the ground that there had been already an oral partition and that therefore a fresh suit for partition was not maintainable, that adjudication could not have been made by the revenue hierarchy provided under the Punjab Land Revenue Act for partition of properties. The appropriate remedy could be done only by the Civil Court which can adjudge on whether there had been a partition with regard to the property or not.

4. The suit was correctly laid and the decree which was passed cannot be challenged before this Court in the manner canvassed by the appellant. There is no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

5. The civil revision in C.R. No.6299 of 2010 is against the order passed by the trial Court in the application for passing of final decree in the preliminary decree that was passed already which had been subject of regular second appeal referred to above. The objection to the manner of allotment suggested by the commissioner is that the commissioner has not taken note of the parties in possession of property and has made allotment of the item of property of which the petitioner is actually in possession of and over which constructions have also been made. If the objection is that the Court has proceeded to accept the report given by the commissioner and had passed the order and the Court has not, according to the petitioner, given opportunity to the petitioner to lead appropriate evidence to counter the report given by the local commissioner, any objection to the local commissioner's

report, if it is not appropriately considered and the order is passed that gives way of passing of final decree, the final decree itself is appealable to the regular court of appeal and an order passed by the Court accepting the local commissioner's report cannot be taken to be a matter for adjudication in the civil revision. The petitioner will have an appropriate remedy to prefer appeal against the order of the Court accepting a commissioner's report and proceeding to effect the partition in the manner in which the commissioner has done. If the order emerges into final decree, that decree is appealable to the appellate court. With the liberty to the petitioner to challenge the correctness of the report in a regular appeal against the final decree that is passed pursuant to the order that has been already passed by the Court accepting the commissioner's report, I dispose of the civil revision.

6. It is stated that the appeal had been filed against the order of the Court accepting the commissioner's report. The appeal seems to have been dismissed holding that the court did not have the jurisdiction. The Appellate Court appears to have attempted to go into the merits of the contentions regarding the commissioner's report. The dismissal will not operate as bar to the petitioner to prefer a regular appeal against the final decree which may have been or may be passed in terms of the report.

(K. KANNAN)
JUDGE

September 17, 2015
Pankaj*