

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

Regular Second Appeal No.1254 of 2013 (O&M)

Date of decision: **30**.09.2015

Swaran Kaur

... Appellant

versus

Gurvinder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vijay Lath, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. Documents filed through Ex.P5 to P7 are taken on record.
2. The second appeal is against the orders passed in final decree proceedings. The plaintiffs who had obtained a half share in respect of the suit property which was an extent of 10 Marlas in Khasra No.18//4/5 through a preliminary decree passed in Civil Appeal No.4/1999 had applied for passing a final decree. The principal contest was entered by respondents 5 and 6. They contended that the suit was bad for partial partition and that the plaintiffs and the defendants are not merely co-owners with

reference to the khasra numbers given in suit but there was yet another khasra number which was in 18//7/3. There have been constructions in both these khasra numbers and the division cannot be made in any way that can prejudice the respondents. The plaintiffs had already given a statement before court that they will be willing to secure their right in the property as per possession already with them and they would not disturb the possession of the defendants except as regards the property excessively held by them.

3. An Advocate Commissioner had been appointed to inspect the property and give a report. A plan had been drawn and the correctness of the same has been accepted by both the parties. The Commissioner had the identify the property to be allotted to the plaintiffs by letters EF GH IJA. The respondents' objection was that the allotment made by the Advocate Commissioner was not correct. It was also their contention that the Commissioner never visited the property and that the plan had been drawn up without making proper identification.

4. The trial court and the appellate court have gone through the objections and found that if the Commissioner's plan was correct, then the manner of allotment made by the Commissioner would require to be accepted. The courts have also found that if the plaintiffs have been granted the preliminary decree in respect of half share that has become final between the parties, there could be no

objection regarding the manner of division suggested by the Commissioner nor could any objection regarding partial partition could be entertained at that stage.

5. I do not find anything substantial in the second appeal for consideration on a point of law. The case has proceeded purely on a simple assessment of the Commission's report brought on the basis of a preliminary decree that was already passed and there is no scope for interference.

6. The second appeal is without merit and it is dismissed.

(K.KANNAN)
JUDGE

30.09.2015

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