

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

**RSA No. 1905 of 2013 (O&M)**  
**Date of decision: 16.09.2015**

Manoj Kumar and another

...Appellants

Versus

Dr. Raj Kumar Gupta and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI**

- 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?**

Present: Mr. C.B.Goel, Advocate,  
for the appellants.

Mr. A.K.Chopra, Senior Advocate with  
Mr. G.S.Bhandel, Advocate,  
for respondent No. 1.

Mr. M.S. Sidhu, Advocate,  
for respondent No. 2.

Mr. K.S.Dhanora, Advocate for  
Mr. TPS Bhatti, Advocate,  
for respondents No. 3 to 8.

\*\*\*\*

**ARUN PALLI, J.(ORAL)**

Vide order dated 18.04.2012, rendered by Additional Civil Judge (Sr. Division), Ludhiana, the Court has passed a final decree for partition of the suit property. Appeal preferred against the said order failed and was dismissed vide judgment dated 16.11.2012. This is how, being aggrieved, successors-in-interest of Defendant No.3-Krishan Lal Gupta are before this Court in this Regular Second Appeal.

Concededly, a preliminary decree dated 07.02.2005, for possession by way of partition of plot Nos.22-23, bearing Municipal Corporation No.B-XVIII-3669 situated in Model Gram, Ludhiana (South) was rendered by Additional Civil Judge, (Sr. Division), Ludhiana. Appeal preferred against the said decree by Sohan Lal Gupta-respondent No.2 failed and was dismissed on 27.01.2010 and, thus, the preliminary decree dated 07.02.2005 has since attained finality. Consequently, respondent No.1, namely, Dr. Raj Kumar Gupta moved an application for granting a final decree before the trial Court. The other co-sharers filed their respective replies to the application moved by respondent No.1. Sh. N.P.S.Gahir, Advocate, was appointed as Local Commissioner to suggest the mode of partition and he furnished his report along with the two proposed site plans as Annexures A and B. Likewise, appellants also furnished two site plans and sought final partition in terms thereof. Three of the four co-sharers, namely, Raj Kumar Gupta, Sohan Lal Gupta and Ved Parkash Gupta also submitted a site plan Mark CX to the effect final partition between the parties be effected by metes and bounds.

Learned trial Court on a consideration of the matter in issue and the evidence on record discarded both the plans submitted by the Local Commissioner as those were in terms of the decree dated 07.02.2005. Likewise, the two site plans brought on record even by the appellants were also rejected. But having found the site plan Mark CX to be most viable, the Court granted a final decree in terms thereof and the conclusion arrived at in this regard reads as

thus:

8. *So far as local commissioner who suggested the mode of partition is concerned, he submitted two site plans and one out of them is not in consonance with the preliminary decree passed which speaks about taking care of possession of the parties. Possession of the parties has been totally disturbed by the Local Commissioner in his site plan annexure A. Site plan given by Local Commissioner annexure B gains some attention of the court but as per this, Sohan Lal has been placed at two places and I consider that it is not appropriate and permissible that one co-sharer has to be placed on two places. So far as two site plan submitted by legal heirs of deceased Krishan Lal are concerned, again these site plans are not in consonance with the preliminary decree passed by the court of Sh. Tarsem Mangla, Ld. Addl. Civil Judge (Sr. Divn.), Ludhiana dated 07.02.2005. Possession of Krishan Lal has been totally shifted in both these site plans. So accordingly, I consider that these site plans submitted by legal heirs of deceased Krishan Lal cannot be accepted for passing final decree.*

9. *Next comes application moved by Raj Kumar, Sohan Lal and Ved Parkash. This is an application moved by them jointly along with site plan. Perusal of this application moved by these three co-sharers reveals that they have consented regarding the property to be given to them and other co-owners. Only legal heirs of Krishan Lal are disagreeing with their this suggestion. Point to be seen is whether the property which has been suggested to the legal heirs of Krishan Lal is in*

*consonance with the preliminary decree dated 07.02.2005. In the site plan (herein referred as site plan mark CX) appended with the application moved by Raj Kumar, Sohan Lal and Ved Parkash, the property shown as red has been suggested to be given to Raj Kumar, property shown as yellow has been suggested to be given to Sohan Lal, property shown as green has been suggested to be given to Ved Parkash and property shown in blue has been suggested to be given to Manoj Gupta, Sunil Gupta etc. legal heirs of Krishan Lal. If calculation is made then 1/8 share out of 994.1/4 sq. yds. comes to 124.25 Sq. Yds. Local Commissioner in his site plan annexure B also suggested the portion to be given to legal heirs of deceased Krishan Lal on the backside where they are in possession by giving a passage of 6 feet in width. Same portion has been shown/suggested to be given in the site plan produced on file by Raj Kumar, Sohan Lal and Ved Parkash. These three major co-sharers are consenting to this site plan. It has come on the file that Krishan Lal was sitting in the property more than his share. So ultimately, some property has to go out of his possession at the time of passing of final decree. If the property shown in site plan brought on file by Raj Kumar, Sohan Lal and Ved Parkash mark CX shown in blue colour given to legal heirs of Krishan Lal, then I consider that it will be in consonance with the preliminary decree dated 07.02.2005. This property is already in their possession. It has been come that for giving approach by calling proportionately the property of others and by deducting very small property from the share of legal heirs of deceased Krishan Lal*

*passage has been carved out for approaching to the property of legal heirs of deceased Krishan Lal which also will be falling to the property of other co-owners.*

*10. So after considering the preliminary decree passed by the court of Sh. Tarsem Mangla, Ld. Addl. Civil Judge (Sr. Divn.), Ludhiana dated 07.02.2005 and after considering the Annexure-B submitted by the local commissioner Sh. N.P.S.Gahir and 2 site plans submitted by legal heirs of deceased Krishan Lal, one site plan jointly given by Raj Kumar, Sohan Lal and Ved Parkash, I consider that it is appropriate and as per record that the site plan submitted by Raj Kumar, Sohan Lal and Ved Parkash jointly has to be accepted by this Court. Certainly it will be implementing the preliminary decree passed by the court of Sh. Tarsem Mangla, Ld. Addl. Civil Judge (Sr. Divn.), Ludhiana as due care has been given to the possession of the parties. So, accordingly, in these circumstances, the site plan submitted on file mark CX is hereby accepted for the purpose of final decree and final decree is hereby passed. The property shown in red colour is hereby given to Raj Kumar, the property shown in yellow colour is hereby given to Sohan Lal, the property shown in green colour is hereby given to Ved Parkash and property shown in blue colour is hereby given to Manoj Gupta and Sunil Gupta etc. legal heirs of Krishan Lal deceased. While there remains one passage as shown in black in the site plan mark CX.”*

Being aggrieved against the decree dated 18.04.2012, only appellants preferred an appeal. Learned Ist Appellate Court, reviewed the matter in issue, evidence on record and, on an analysis

thereof, found itself in concurrence with a view drawn by the trial Court. Consequently, the appeal was dismissed.

I have heard learned counsel for the parties and perused the records.

Learned counsel for the appellants reiterates the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. All what he has urged is that the portion that has been assigned to the appellants by way of final partition is at the rear side of the property, whereas the portions that have been allotted to the three co-sharers abut the main road. Further, he submits that the site plans submitted by the appellants do show that they too could have been adjusted over a portion abutting the main road, as that would have been a fair option.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the preliminary decree for possession by way of partition dated 07.02.2005 has since attained finality and reads as thus:

***“In view of my aforesaid discussion, the suit of the plaintiffs is decreed and a preliminary decree is passed for possession by way of partition of the suit land by metes and bounds so as to separate 3/8 share of Raj Kumar, 1/8 share of Urmila, 1/4<sup>th</sup> share of Sohan Lal and 1/8 share of defendants Ved Parkash and Krishan***

***Lal from the suit property by taking care of their established possessions. In view of the peculiar circumstances of the case, parties are left to bear their own costs.”***

Three of the four co-owners were apparently the major shareholders in the joint property as Raj Kumar held 3/8<sup>th</sup> share, Sohan Lal had 1/4<sup>th</sup> share and Ved Parkash possessed 1/4<sup>th</sup> share therein. None of those is aggrieved by the final decree for partition dated 18.04.2012. The appellants, concededly had 1/8<sup>th</sup> share in the suit property. Ex facie, the preliminary decree dated 07.02.2005 for partition was passed subject to the established possession of the parties to the lis. Before passing the final decree, the trial Court requisitioned the original records of decree Civil Suit No. 5 of 08.12.1989, in which a preliminary decree was passed, and on a consideration of the site plan appended with the plaint, that depicts actual physical possession of the parties, and the preliminary decree dated 07.02.2005, found the mode of partition suggested in site plan Mark CX to be the most viable option. The two site plans submitted by the Local Commissioner were discarded as these were not found to be in sync with the preliminary decree as regards established possession of the parties. Likewise, the two site plans submitted by the appellants were also not found to be in consonance with the preliminary decree dated 07.02.2005. As the mode of partition suggested therein was not feasible and would have disturbed the settled possession of the parties. Therefore, the property shown in red colour in the site plan marked CX, measuring 345 sq. yards was

allotted to respondent-Raj Kumar, property shown in yellow colour, measuring 230.65 sq. yards was allotted to Sohan Lal and property shown in green colour, measuring 246.49 sq. yards was allotted to Ved Parkash and the property shown in blue colour, measuring 120.55 sq. yards was assigned to the appellants. A passage as depicted in the site plan marked CX was provided to the appellants from the main road itself to access the portion allotted to them. Concededly, the blue portion that has been allotted to the appellants was in their actual physical possession from the beginning as is made out even from the site plan appended with the original plaint in Civil Suit No. 5 of 08.12.1989.

Learned counsel for the appellants could not point out as to how the conclusions that have concurrently been recorded by both the Courts below, were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. The same being devoid of merit is, accordingly, dismissed.

**16<sup>th</sup> September, 2015**

vandana

**(ARUN PALLI)  
JUDGE**