

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

**RSA No.5491of 2015 (O&M)
Date of decision: 14.10.2015**

Sadhu Ram

... Appellant

Vs.

Om Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Sanjeev Kumar Panwar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant No.1 is in Regular Second Appeal against the judgments and decrees of the Courts below, whereby, final decree, in suit for partition, has been drawn.

Mr. Sanjeev Kumar Panwar, learned counsel appearing on behalf of appellant/defendant No.1 submits, that both the Courts below have committed illegality and perversity in giving finding that khasra number 398/1 is Rudi, whereas, it is part of constructed portion, whereas, *verandha* constructed by appellant/defendant No.1 has fallen. The Courts below accepted proposal no. 2, suggested by the Local Commissioner, for the purpose of partition and the same is with regard to mode of partition of the co-sharers. In essence, in

case finding rendered by both the Courts below that khasra no.398/1 being Rudi, is upheld, it would affect the possession of appellant/defendant No.1 as he has also raised construction and is in continuous possession of the same since long.

I have heard learned counsel for appellant/defendant No.1 and appraised the impugned judgments and decrees of the Courts below.

The finding rendered by lower Appellate Court while dismissing the appeal reads thus:-

“9. After having given a thoughtful consideration over the rival submissions of the parties, and on perusing the case file very carefully, this Court is of the considered view that the learned Court below had appointed the local commissioner on the request of appellant/defendant No.1 for suggesting the mode of partition and then the local commissioner suggested three proposals out of which proposal no.2 was found to be the best proposal, therefore, the same was accepted and it was ordered that the parties shall possess their respective shares as per this site plan. I have perused proposal no.3 also and according to this site plan khasra no.157 has been shown under the possession of Kand Ram whose house is constructed thereon and further Om Parkash etc. have constructed their houses on khasra no.195. Further

Baldev has constructed his house over a part of khasra no.282/2 and Deep Chand has also raised the construction of his house in part of khasra no.282/1. According to proposal no.2 the possession of co-sharers have been left intact except out of khasra no.398/1 which is a Rudi and in this khasra number each co-sharer has been given a share according to their entitlement and the only grievance of the appellant is that some part of his veranda has come into the share of other co-sharer. When appellant/defendant No.1 had filed his objections before the learned Court below against the suggested mode of partition then he never claimed that his house had been constructed in khasra no.398/1, rather he had asserted that no possession should be given to the plaintiffs out of khasra no.282. Khasra no.398/1 is located on two rastas, therefore, the land of this khasra number may be more valuable and each co-sharer has to be allotted a share therefrom, therefore, the appellant alone cannot be held entitled for taking the entire land of khasra no.398/1 and the scheme prepared by the local commissioner is the best possible way of partitioning the suit land amongst the co-sharers because it has been specifically mentioned by the local commissioner that if partition is effected as per proposal no.1 then other co-

sharers shall be deprived from taking a share out of khasra no.398/1. Learned counsel for the appellant could not point out any infirmity and irregularity in the impugned final decree. There is nothing perverse or illegal in the impugned judgment and final decree of learned Court below to interfere with the same. Learned Court below has given cogent and convincing reason while passing the final decree. No ground to interfere is made out.”

The proposal No.2 submitted by the Local Commissioner has been accepted by the Courts below. As per proposal, some part of veranda has come into the share of other co-sharers and partition of veranda would not seriously affect the appellant. In essence, possession qua construction portion of appellant has been kept intact as has been done in respect of other co-sharers. The objections filed by appellant/defendant No.1 were that plaintiffs should not be given share out of khasra No.282, much less, khasra No.398/1 is also located on two rastas.

During the course of arguments, learned counsel for appellant/defendant No.1 has passed on a photograph of the area and from perusal of the photograph, it is evident that some part of verandha has fallen in the share of appellant/defendant No.1 and beyond verandha, there is the residential accommodation of appellant/defendant No.1. Thus, in my view, according to proposal no.2, the possession of appellant/defendant No.1, in residential area

is not being effected.

The aforementioned contention, did not carry weightage, according to the Courts below, much less, and in my view, also for the reason that it is only part of verandha which is being falling into the share of other co-sharers, but the possession of his residential portion is not being effected.

There is no illegality, much less, perversity in the judgments and decrees of the Courts below and no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 14, 2015
savita