

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 1120 of 2015

Date of Decision: 12.2.2016

Guranditta Singh and others

---Petitioners

vs.

Jagjit Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sherry K.Singla, Advocate
for the petitioners

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Mr.PKS Phoolka, Advocate
for the respondents

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

Rekha Mittal, J.

By invoking Article 227 of the Constitution of India, the present petition lays challenge to order dated 5.1.2015(Annexure P-7) passed by the Additional Civil Judge (Senior Division), Talwandi Sabo vide which the learned trial court has disposed of the objections filed by the respondents to the proposed mode of partition suggested by a Local Commission appointed by the court.

The petitioners filed a suit for separate possession of half share of gair mumkin ruri and abadi land measuring 1 kanal 18 marlas comprised in khasra Nos. 181//1(0-5) and 189//48/2(1-13) situated at village Behman

Jassa Singh tehsil Talwandi Sabo, District Bathinda, by way of partition. A preliminary decree was passed vide judgment and decree dated 1.2.2013 whereby it was held that the petitioners are owners in the suit property to the extent of 1/10th share each. The petitioners filed an application for final decree for delivering separate possession of half share of the suit property in pursuance of the decree dated 1.2.2013.

The trial court vide order dated 29.5.2013 appointed the Halqa Kanungo as Local Commissioner to suggest a mode of partition and submit the report. In pursuance thereof, the Halqa Kanungo submitted the report dated 27.9.2013 (Annexure P-4). As per the report, it was held that the respondents are in possession of excess land measuring 5^{5/6th} marlas and it was suggested that the petitioners can be delivered 2½ marlas more out of khasra No. 181//5 and for the remaining land, compensation can be assessed.

The respondents filed objections to the report to which the petitioners filed their response. The objections have been disposed of by the trial court vide impugned order (Annexure P-7). Though the court has held that land to the extent of share of decree holders is deficient to the extent of 5^{5/6th} marlas as the respondents are in possession of excess land but directed the parties to adduce evidence for assessment of compensation in regard to land measuring 5^{5/6th} marlas by not accepting the report of the Local Commissioner to compensate the petitioners to the extent of 2½ marlas of land out of khasra No. 181//5 and decided to grant compensation in respect of the entire land that was found short out of the share of the petitioners.

Counsel for the petitioners contends that the learned trial court has not assigned any reason to reject report of the Local Commissioner for adjustment of 2½ marlas of land to make up deficiency in the share of petitioners out of khasra No. 181//5 and payment of compensation in respect of the remaining land only, thus the order impugned is liable to be modified.

Counsel for the respondents would contend that the respondents are entitled to a passage out of joint land and the Local Commissioner has ignored the said fact, therefore, the report of the Local Commissioner may be set aside and a fresh Local Commissioner may be appointed.

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

Counsel for the respondents has not disputed measurements of the land in dispute and the extent of area of khasra No. 189//48/2 in occupation of parties underneath their houses. After taking into consideration the area under the house of the petitioners plus 2½ marlas having fallen to their share out of khasra No. 181//5, it was found that there was deficiency of 5^{5/6th} marlas in the area of the petitioners to the extent of their half share in the total land measuring 1 kanal 18 marlas. As the respondents have occupied more area than that of their share out of khasra No. 189//48/2, the Local Commissioner took a very reasonable view by suggesting that the petitioner should be given 2½ marlas that had fallen to the share of the respondents to the extent of half share out of khasra No. 181//5 and the respondents should compensate the petitioners in terms of money, in respect of the remaining land. The learned trial court has not assigned any reason to deny the petitioners entitlement to 2 ½ marlas of

land of the share of the respondents out of khasra No. 181//5. In this view of the matter, I find force in the contentions of the petitioners that the report submitted by the Local Commissioner is liable to be accepted in its entirety and the order passed by the trial court modifying the report to the extent of allowing compensation in respect of the entire area measuring 5^{5/6}th cannot be allowed to sustain.

To be fair to the respondents, counsel has submitted that the respondents are entitled to passage from the joint land of the parties. The plea of the respondents is misconceived and merits out right rejection. Nothing has been submitted by the respondents that no passage is available to the house(s) constructed by them on khasra No. 189//48/2.

In view of what has been discussed hereinbefore, the petition is allowed and the trial court is directed to proceed with the matter in the aforesaid terms.

(Rekha Mittal)
Judge

12.2.2016

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