

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

**Date of Decision: April 29<sup>th</sup>, 2016**

**1. Civil Revision No.1188 of 2012 (O&M)**

**Smt.Sudesh Rani & others**

...Petitioners

Versus

**Baldev Raj (since deceased) through L.Rs and others**

...Respondents

**2. Civil Revision No.1189 of 2012 (O&M)**

**Inder Mohan**

...Petitioner

Versus

**Baldev Raj (since deceased) through L.Rs and others**

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

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.Sumeet Mahajan, Senior Advocate with  
Ms.Ramneeq Kaur, Advocate,  
for the petitioners in both the petitions.

Mr.Harkaran Singh, Advocate for  
Mr.B.S.Bhalla, Advocate,  
for the respondents in both the petitions.

\*\*\*\*\*

**AMIT RAWAL, J. (Oral)**

By this order, I intend to dispose of two Civil Revision Nos.1188 and 1189 of 2012, which are filed at the instance of the third party, who had objected to the execution of the judgment and decree passed by the Lower Appellate Court dated 3.5.2003, which has been passed on the basis of the compromise.

Mr.Sumeet Mahajan, learned Senior Counsel assisted by Ms.Ramneeq Kaur, Advocate, appearing on behalf of the petitioners submits that Civil Suit No.1 of 1998 filed at the instance of Baldev Raj, plaintiff-respondent No.1 herein, was for claiming partition of 1/3<sup>rd</sup> share of the property described, including the shops/property purchased by the petitioners vide sale deed dated 10.6.1982 in Civil Revision No.1189 of 2012 and sale deed dated 14.8.1984 in Civil Revision No.1188 of 2012 and the claim in the suit was on the basis of the Will of Vidya Wanti daughter of Munshi Ram. He further submits that Lala Narsingh Dass was owner of the property. He had three sons, namely, Munshi Ram, Mela Ram and Tulsi Ram. Munshi Ram was survived by widow Devki and one daughter Vidya Wanti. Mela Ram was survived by one son Shiv Lal-defendant No.1, who is since deceased and five surviving legal representatives. Estate of Tulsi Ram succeeded in favour of Mathra Dass (Kamla Wati and Ram Rakhi widows). His estate was succeeded by two daughters, namely, Nirmala and Kaushalya (defendant Nos.6 and 7). The properties mentioned in the aforementioned sale deeds were purchased by Nirmala and Kaushalya. The trial Court dismissed the suit on the premise that Baldev Raj, who had propounded the Will of Vidya Wanti could not prove the same and having failed to prove the title, suit was accordingly dismissed.

He further submits that during the pendency of the suit, both defendant Nos.6 and 7 Nirmala and Kaushalya were proceeded ex-parte on the basis of causing a publication in Newspaper "Chardi Kalan" without recording the satisfaction that defendant Nos.6 and 7 were avoiding the service and, thus, provisions of Order 5 Rule 20 CPC were not complied with. The aforementioned judgment and decree was assailed by filing Civil

Appeal No.375 of 2002, wherein attorney of defendant Nos.1 to 5, namely, Amar Singh and Baldev Raj suffered statements, which have been extracted at pages 8 and 9 of the grounds of revision. He also submits that on perusal of the statement of Baldev Raj, he had sought no relief against defendant Nos.6 and 7 and, therefore, the Lower Appellate Court instead of decreeing the suit, ought to have dismissed the suit as the same could not have been maintainable on account of partial partition.

He also submits that an objection petition was filed on behalf of the aforementioned petitioners. The plaintiff filed an application for drawing the final decree and did not implead the predecessors-in-interest of the petitioners, i.e., defendant Nos.6 and 7, namely, Nirmala and Kaushalya. Learned Counsel has drawn the attention of this Court to Annexure P-5, an application submitted in this regard. On perusal of the file and the application, the trial Court appointed a Local Commissioner, who visited the spot for taking the measurements. The petitioners came to know about the aforementioned facts and immediately after engaging the counsel, filed the objection petition which has been dismissed in a most fallacious and arbitrary manner and pith and substance of the impugned order is that the objections cannot be entertained in the absence of challenge to the preliminary decree. In support of his submissions, relies upon the judgment rendered by the Hon'ble Supreme Court in **Kenchegowda (since deceased) by legal representatives Versus Siddegowda alias Motegowda, (1994) 4 Supreme Court Cases 294** to contend that once Baldev Raj had given up the claim against the alleged other co-sharers, i.e., Nirmala and Kaushalya, suit was liable to be dismissed on account of partial partition. He further submits that the objections filed were decided in a summary manner,

whereas the Court was enjoined upon an obligation to frame the issues and ought to have given opportunity to the parties to lead evidence in this regard.

Mr.Harkaran Singh, Advocate for Mr.B.S.Bhalla, Advocate, appearing on behalf of the respondents submits that the objections at the instance of the petitioners were not maintainable as they had not challenged the judgment and decree dated 3.5.2003 as envisaged under Section 9 of the Civil Procedure Code. The defendants had a remedy to contest the suit as they were duly served, but intentionally did not appear and now they have taken a totally different stand. Attempt is to delay the execution of the judgment and decree and, therefore, rightly so, the objections have been dismissed and, thus, urges this Court for affirmation of the impugned order.

I have heard the learned counsel for the parties, appraised the paper book and as well as gone through the case law.

It would be apt to reproduce the statements suffered by attorney of defendant Nos.1 to 5 and as well as the plaintiff, which read thus:-

*"Baldev Raj Vs. Kaushalya*

*Statement of Amar Singh attorney of respondent No.1 to 5.*

*I was the attorney of respondent No.1 to 5. Shanti Devi died issueless. Baldev Raj is owner in possession to the extent of 1/3<sup>rd</sup> share in property in dispute. We have no objection, if the suit property is partitioned amongst its co-sharers. Will dated 31.12.73 and 26.4.67 were validly executed by Vidya Wati and Devki Devi in favour of Baldev Raj respectively. Appeal of Baldev Raj be accepted. Copy of power of attorney is mark A.*

*RO&AC*

*Sd/-*

*Dated:3.5.2003*

*Additional District Judge*

*Sd/-Amar Singh*

*(President) Lok Adalat*

*Sd/-Manpreet Kaur*

*Member Sd/-(not legible)*

*Advocate*

*Member \_\_\_\_\_*”

*“Statement of Baldev Raj son of Ishar Dass appellant.*

*In view of the statement of attorney of respondents No.1 to 5 appeal be accepted. No relief is claimed against respondents No.6 & 7.*

*RO&AC*

*Sd/-*

*Dated:3.5.2003*

*Additional District Judge*

*Sd/-Baldev Raj*

*(President) Lok Adalat*

*Sd/-not legible*

*Member Sd/-(not legible)*

*Advocate*

*Member \_\_\_\_\_*”

In view of the aforementioned statements, the Court below, while exercising the powers under the Lok Adalat, passed the following order:-

"Present: Counsel for the parties.

Parties effected a compromise. Amar Singh attorney of respondent No.1 to 5 made statement that Baldev Raj is the owner in possession to the extent of 1/3<sup>rd</sup> share in the property in dispute. No objection if the property is partitioned amongst the co-sharers. Wills dated 26.4.1967 and 31.12.1973 were validly executed. Appeal be accepted. Baldev Raj made statement that no relief is claimed against respondents No.6 and 7. As per statement of Amar Singh appeal be decided.

2. As per statement of Baldev Raj, as no relief is claimed against respondents No.6 and 7, so names of respondents No.6 and 7 are deleted from the array of the respondents. As per compromise in view of the statement of the attorney of the respondents, judgment and decree dated 9.9.2002 is set aside. Appeal is accepted. Baldev Raj is the owner in possession of 1/3<sup>rd</sup> share in the property in dispute and the same is to be partitioned amongst the co-sharers. Parties are left to bear their own costs. Decree sheet be prepared. Lower court record be returned. Appeal file be consigned to record room.

Pronounced in open Court

Sd/-

Dated:3.5.2003

President, Lok Adalat  
(Addl.District Judge),  
Kapurthala.”

Despite having given up the claim against defendant Nos.6 and 7, the erstwhile vendors of the petitioners, the respondent-plaintiff when moved an application for drawing up the final decree did not implead them as party. For the sake of brevity, the memo of parties of the application reads thus:-

*"Copy of order dated 3.1.2012*

*IN THE COURT OF SHRI TEJPARTAP SINGH RANDHAWA,  
PCS CIVIL JUDGE (JUNIOR DIVISION), PHAGWARA.*

*Case No.23 dated 7.9.2005*

*R.T.No. 1 Dt.20.5.06*

*Next Date: 27.3.2012*

*Baldev Raj son of Shri Ishwar Dass, r/o Doaba Chowk,  
Jalandhar.*

*...Applicant*

*Versus*

- 1. Saraswati Devi wd/o Shri Shiv Lal s/o Mela Ram;*
  - 2. Shanti Devi wd/o Om Parkash s/o Shiv Lal son of Mela Ram,*
  - 3. Sat Pal*
  - 4. Sham Lal*
  - 5. Inder Kumar-sons of Shiv Lal son of Mela Ram*
- All residents of Railway Road, Rajpura, District Patiala.*

*...Respondents*

*Application for passing the final decree in Suit  
No.1 of 2.1.1998, decided on 9.9.2002 in appeal  
No.375 dated 3.10.2002, decided on 3.5.2003,  
passed by Additional District Judge, Kapurthala.  
(Application for passing final decree).”*

In my view, no doubt the Court below ought to have dismissed

the suit in toto in view of the fact that the same was not maintainable in view of partial partition. Be that as it may, as the other defendant Nos.1 to 5 are not aggrieved of the judgment and decree, therefore, I need not ponder upon the merits and de-merits of the maintainability of the suit when respondent-plaintiff has given up the claim against defendant Nos.6 and 7, the predecessors-in-interest of the petitioners. The Local Commissioner could not have been appointed for measurement of the property purchased by them vide sale deed, referred above and, therefore, the judgment and decree cannot be read against defendant Nos.6 and 7 on account of the statement suffered by the respondent-plaintiff.

Accordingly, the impugned order 3.1.2012 is hereby set-aside by holding that the judgment and decree dated 3.5.2003 shall be read only against defendant Nos.1 to 5 and not against defendant Nos.6 and 7 and their successors-in-interest.

In view of the aforementioned observations, revision petitions stand allowed.

**April 29<sup>th</sup>, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**