

217.

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

Civil Revision No.2485 of 2014 (O&M)

Date of decision:19.01.2016

Gurdeep Singh and others

... Petitioners

versus

Ranjit Singh alias Shri Jit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

Mr. Jaideep Verma, Advocate,
for respondents 1 and 2.

Mr. H.N.S. Gill, Advocate,
for respondent No.12.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. A suit for partition brought through a preliminary decree is followed up by the plaintiff with an application for passing of final decree filed under Order 20 Rule 18 CPC. An objection has been taken by one of the defendants that the final decree cannot be passed without ascertaining the shares of the defendants. The court has made reference to the fact that the defendant preferred an appeal

and the appeal was also dismissed. This is stated to be wrong. The court, while considering the application filed by the plaintiff, had appointed a Local Commissioner to give his report and set a date for submission of a report. It is this order that is brought in challenge before this court.

2. The contention of the petitioner who is one of the defendants in the suit for partition is that the final decree application that does not determine the rights of all parties cannot be passed without modification of the preliminary decree. The counsel also makes reference to judgment of Calcutta and Guwahati High Courts for the same effect. Misunderstanding that has come about in the mind of the petitioner is that a preliminary decree would not be capable of being escalated to a further stage in final decree unless the decree is modified for the benefit of each defendant. The principle canvassed is wrong. A preliminary decree is granted in favour of plaintiff for a share which he seeks for. In a partition suit, the parties, who have shares in the properties, are in the position of plaintiffs. It will be open for any person who has a share in the property to seek for a preliminary decree in his own favour. Consequently, it is open for each one of the defendants to secure a preliminary decree in respect of the share on payment of court fee and a court has also a power to pass any number of final decrees to make division of everyone of the persons who has a share in the

property. Consequently, if there is a defendant who wants his share also to be demarcated and a specific allotment made to him in respect of his share, it will be open to such a party to apply to the court for passing a preliminary decree for the share which he is entitled to and also seek for passing of final decree in the very application filed by the plaintiff in passing of such decree. A Local Commissioner who is appointed will in such an event make a division in such a way that it protects a share of every person who seeks for allotment.

3. I may illustrate the procedure for future guidance so that this type of misguided petition do not arise in this jurisdiction. If a suit for partition is filed by a daughter claiming a share of $\frac{1}{4}$ th share against her brothers and there are three brothers each one of them being entitled to $\frac{1}{4}$ th share, a decree passed for $\frac{1}{4}$ th share can be pressed for passing of final decree by the plaintiff seeking for allotment of $\frac{1}{4}$ th share. It is not necessary for the court to identify $\frac{1}{4}$ th share of each of the defendants for the only reason that the brothers may choose not to divide the properties and then may choose to remain joint with reference to their $\frac{3}{4}$ th share. In the alternative, anyone of the defendants, namely, the brothers may apply for grant of a preliminary decree of $\frac{1}{4}$ th share for each one of them and seek at the time of an application for passing of final decree that the division must be made not merely of the $\frac{1}{4}$ th share

of the sister but a division should be made also for each of the shares of the brothers. The Local Commissioner would in such a situation be directed to make suggestion for division of the property in 4 moieties so that each one of the sharers gets a property that is allottable to his share. This is therefore wholly optional for any of the defendants to seek for modification of the preliminary decree already granted for 1/4th share to provide also for 1/4th share of each of the brothers or allow the 3/4th share of the remaining brothers to continue in an undivided status.

4. In this case if the defendants had not sought for modification of the decree for determining their own share by seeking for passing a preliminary decree and only the plaintiff was asking for passing of final decree, the court would be justified in allowing for appointment of a Commissioner and direct him to give a report to suggest a mode of partition for the share which the plaintiff has secured through the preliminary decree. There requires no intervention in revision petition and it is dismissed with costs assessed in two sets at ₹3,500/- for each of the contesting respondents.

(K.KANNAN)
JUDGE

19.01.2016
sanjeev