

Civil Revision No.5218 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5218 of 2016

Date of Decision: 17.8.2016

Birkha through Lrs.

--- Petitioners

versus

Mange Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.R.D.Yadav, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 5.7.2016 passed by the Additional Civil Judge (Senior Division), Kosli whereby the objections preferred by the petitioners against the report of a local commission in proceedings for final decree, have been dismissed.

Counsel for the petitioners has submitted that suit filed by the

plaintiffs/respondent Nos. 1 and 2 for separate possession by way of partition of the property was dismissed by the trial court but the appeal preferred by them was allowed by the Additional District Judge. The judgment and decree passed by the appellate court has been challenged by way of regular second appeal pending before this Court for decision. It is further submitted that in view of the report of the local commission, the petitioners have been given 23 square yards less than that of their entitlement to the extent of 5 marlas. It is prayed that the impugned order may be set aside and the trial court may be directed to modify the preliminary decree by invoking Order 20 Rule 18 of the Code of Civil Procedure (in short "CPC").

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

On a pointed query raised by the Court as to what was the share allotted to the petitioners in view of the preliminary decree passed by the Court of Appeal, it has been informed that the Court only decided share of the respondents/plaintiffs to the extent of 20/243th but shares of the respondents in the disputed land have not been determined. As the matter with regard to share of the respondents/plaintiffs and share holding of the

defendants including that of the petitioners is sub judice before this Court in the pending regular second appeal, no such claim of the petitioners at this stage, can be entertained that they are entitled to 5 marlas of land but the local commission has allotted them 23 square yards less than that of their share. That being so, I do not find any reason to interfere in the impugned order but without prejudice to the rights of the petitioners in the pending regular second appeal.

Disposed of accordingly.

(Rekha Mittal)
Judge

17.8.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No