

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

**Civil Revision No.6004 of 2016
Date of Decision:14.9.2016**

Rajan Setia

.....Petitioner

Vs

Kulbhushan and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.R.S.Rangpuri, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

1. Petitioner-defendant No.1 has assailed order dated 12.7.2016 passed by Additional Civil Judge (Sr. Divn.) Sri Muktsar Sahib, vide which objection filed by him against passing of final decree was dismissed.

2. Petitioner-defendant alleged that plaintiffs-respondents No.1 to 3 filed a civil suit for partition in the trial Court and the same was decreed on 14.2.2012 by the Additional Civil Judge (Sr.Divn.) Sri Muktsar Sahib by declaring that plaintiffs were owners of 3/5th share, defendant No.1 was owner of 1/5th share and defendants No.2 and 3 were jointly owners to the extent of 1/5th share of the land measuring 7 kanals 7 marlas.

3. Thereafter, plaintiffs filed an application on 13.2.2015 before the trial Court for passing final decree on the basis of preliminary decree dated 14.2.2012. In the said application, petitioner-defendant filed objection to the effect that judgment and decree dated 14.2.2012 is only a declaratory decree and its effect can be given in the revenue record, but no final decree for partition can be passed on the basis of such decree. Trial Court dismissed the objection vide order dated 12.7.2016 and proceeded further on the application for passing of final decree by appointing Local Commissioner to suggest the mode of partition. The impugned order dated 12.7.2016 has been assailed in the present revision petition on the ground that the same is not sufficient for passing the final decree as it was only a declaratory mechanism vide which shares of the co-sharers were determined.

4. Apparently, it was a civil suit for partition of land measuring 7 kanals 7 marlas filed by the plaintiffs-respondents No.1 to 3. The suit was thoroughly contested by the defendants. After thorough appreciation of evidence, trial Court decreed the suit after noticing that it was for the defendants to have adverse interest against those co-sharers, whom they were representing before the Civil Court being their GPA. It was not their case that defendant No.1 or his father or any other family member of Bharat Bhushan had received any consideration or sale of

shares of other co-sharers who were party to the suit at any point of time. Bharat Bhushan and Rajan Setia and his family members remained custodian of the interest of plaintiffs and defendants No.2 and 3. Plaintiffs and defendant Nos. 2 and 3 were competent to seek declaration of their rights in the shape of preliminary decree and being in joint possession as co-sharers. The relief clause of the judgment and decree dated 14.2.2012 contained that the plaintiffs were owners of $\frac{3}{5}$ th share, defendant No.1 was owner of $\frac{1}{5}$ th share and defendants No.2 and 3 were owners of $\frac{1}{5}$ th share jointly in the land measuring 7 kanals 7 marlas. In this way, the defined shares of co-sharers were noted in the decree passed by the trial Court. That decree was never assailed by the petitioner-defendant in any manner. The decree holder is entitled to get the final decree pursuant to the preliminary decree dated 14.2.2012.

5. In execution, defendant No.1 contested the execution by filing written reply on the ground of limitation and contended that the application was barred by conduct of the decree-holder. Defendant No.1 contended that the Court did not pass preliminary decree for partition of land measuring 7 kanals 7 marlas, rather a declaratory decree was passed and, therefore, final decree in pursuant to such declaratory decree cannot be passed. The main ground for attacking the impugned order is that the declaratory decree was not executable in nature and the

decree-holder should have filed independent suit for possession.

6. Having perused the record, I find that suit was for partition of the property as mentioned in the title of the suit. The suit was decreed after noticing the facts in para No.17 of the judgment. By passing the judgment and decree in question, the trial Court denied the shares of co-sharers in the manner as depicted above. Merely because it was not incorporated in the relevant clause that preliminary decree was passed, in considered opinion of this Court, is of no material consequence. Apparently, from the head note of the plaint, it was clear that the suit for partition was filed. The observations made by the trial Court in the judgment revealed that Bharat Bhushan and Rajan Setia and his family members remained as custodian of the interest of the plaintiffs as well as defendants No.2 and 3. The custodian of the interest of the plaintiffs were not supposed to erode the faith and interest of the plaintiffs, defendants No.2 and 3. Rights of the plaintiffs and defendants No.2 and 3 in terms of specified claims has been rightly appreciated by the trial Court in adjudging their denied shares in the decree, which is nothing but a preliminary decree in a suit for partition. Being in joint possession and being co-sharers, no limitation is attracted.

7. In considered opinion of this Court, the objection raised by the defendant at the time of final decree was totally misplaced. This Court does not find any jurisdictional error in

the impugned order nor the same is vitiated on account of non observance of mandatory requirement.

8. In view thereof, this revision is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

September 14, 2016
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Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No