

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7512 of 2016 (O&M)
Date of decision:09.11.2016

Jagtar Singh

... Petitioner

Vs.

Hoshiar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Bhupinder Kaur, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner is aggrieved of the impugned order dated 13.09.2016 (Annexure P-4), whereby, the objections to report/naksha/site plan prepared by Kanungo, Annexure P-1(colly), have been dismissed.

Ms. Bhupinder Kaur, learned counsel appearing on behalf of the petitioner submits that the respondent-plaintiff had filed a suit for separate possession and partition of the property which was decreed by the trial Court and preliminary decree dated 20.10.2007 was passed. When the application for drawing a final decree was moved, a Kanungo was appointed, who submitted the following report:-

“It is submitted that I was appointed as a Local Commissioner in a case titled as “Hoshiar Singh vs. Jagtar Singh vide order dated 25.01.2016 passed by Hon'ble Court of Sh. Munish Garg, PCS (CJJD) Ludhiana. In compliance of the order passed by yourself, I inspected the spot alongwith the Halqa

Patwari. On the spot, demarcation of the khasra no.160 was done. Accordingly, on the spot, possession was seen. As per the enclosed sketched site plan, Jagtar Singh son of Hazura Singh son of Lal Singh, in whose favour, as per the revenue record 0 K 15 M land came but he is in possession of 0 K 18 M, on which a house is constructed. As per revenue record, in favour of the Second Party, i.e., Hoshiar Singh, Nahar Singh etc. 2 K 5 M land came but they are in possession of 2K 2M land. Jagtar Singh son of Hazura Singh is in possession of extra 0K 3M, on which, house is constructed.

As per proposal no.1, if the partition is done by keeping the possession intact then Jagtar Singh has a House as per the enclosed site plan, but if partition is done as per this site plan, then Jagtar Singh has 0K 3M extra land and for giving the same to other land owners, house has to be demolished. Otherwise, as per the present site plan, there is a loss of 0K 3M to the party Hoshiar Singh.

As per proposal No.2, according to the enclosed site plan, after demolishing the whole house of Jagtar Singh, then Jagtar Singh will have 0K 1M land extra and the other party of Hoshiar Singh will get the loss of 0K 1M, which may be ignored at the time of partition. The enclosed site plan of proposal no.1, 2 may kindly be treated as part and parcel of this report. Khasra No.151, 152, 153 kitte 3 rakba 0K 6 M, in

which Jagtar Singh has 1/5th share and owner of 0K 11/5M.”

She further submits that both the proposals made by Kanungo are not suitable to the petitioner as by recouping of the excess area alleged to be in possession of the petitioner for handing over the same to the defendants, there would have a demolition of the residential house constructed thereon. She further submits that the petitioner is willing to pay the market price of the excess area which has fallen to the share of the defendants subject to any other terms and conditions which this Court deem fit as per the provisions of Sections 3 and 4 of the Indian Partition Act, so that the house constructed over the property is kept intact.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that the offer given by Ms. Bhupinder Kaur, during the course of hearing, appears to be fair and justified.

Accordingly, the impugned order is set aside owing to the fact that as per the demarcation report, the petitioner is found to be in possession of excess area measuring 0 kanal 3 marlas, whereas, the share of the defendants is 2 kanals 5 marlas but they are in possession of 2 kanals 2 marlas. In case, any application is moved in this regard, the trial Court shall call upon the other party and consider the same pragmatically and in accordance with the provisions of aforementioned Act to keep the possession intact.

The order under challenge will not come in the way of the petitioner in moving the application aforementioned as suggested by the learned counsel for the petitioner and prayer indicated above.

Accordingly, the revision petition stands disposed of.

November 09, 2016

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No