IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.95 of 2016 (O&M)
Date of Decision.11.01.2016

Chatter Singh (since deceased) through LRs .....Petitioners

Vs.

Bani Singh (since deceased) through LRs .....Respondents

Present: Mr. Jatin Hans, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The revision petition is against the order challenging the proceedings before the trial Court where the Court has allowed for its orders to be reviewed and permitted the defendant to set objection to the commissioner's report suggesting modes of partition. The contention brought by the plaintiff is that this objection is brought only after warrant of possession is given and that it is intended to delay the whole proceedings. I find the whole procedure adopted even if warrant had been issued is erroneous.

2. If the preliminary decree for partition has been passed, next procedure shall be to apply for passing a final decree to be passed suggesting modes of division. It is invariably drawn by the local commissioner inspecting the property and suggesting modes of division. On such report, the parties shall have their objections to be stated and the Court is bound to hear the objections on the commissioner's report

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before it can pass an order either accepting the report or rejecting the same. On such orders being passed, the plaintiff who wants the manner of allotment to be put through execution is bound to furnish the general stamps to the Court for engrossing the manner of division in final decree proceeding. It is that final decree which can be put in execution. The order passed on commissioner's report itself cannot be put in execution and the application for passing the final decree cannot be taken as an execution petition. An execution petition is a further stage subsequent to the passing of final decree. A preliminary decree for partition itself is inexecutable. It becomes executable only after the passing of the final decree. An application filed for passing of the final decree cannot be construed as an execution petition. Till a final decree is drawn up in accordance with law and subject to stamp laws, it does not become executable.

3. If the Court had allowed for warrant of possession to be issued and an objection is taken and the Court was reviewing its order allowing for objections to be brought, it is the only proper procedure which could have been adopted. The counsel says that there is no obligation for a Court to receive objection and it is only left to its discretion. I reject such an argument. It is not a correct understanding of law that the Court will not hear the objections on the commissioner's reort and on application for passing of final decree. Final decree will abide by orders of Court on the objections made by a party. I have set down the step by step procedure before a Court puts a final decree for partition into execution and if there is any further order allowing for execution or allowing for delivery of possession, it is wrong and it must

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be taken as set aside.

4. There is no merit in the revision petition and it is dismissed.

(K. KANNAN)
JUDGE

January 11, 2016
Pankaj*

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