

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

**R.S.A No.5106 of 2011 (O&M)
Date of decision :04.08.2016**

Phoolwati and others

..... Appellants

Versus

Usha Devi and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.S.Chauhan , Advocate
for the appellants.

Mr. Sanjeev Kodan, Advocate
for respondent no.1.

DARSHAN SINGH,J

The present appeal has been preferred by the legal representatives of defendant no.1-Vidya Sagar against the judgment dated 14.05.2011 passed by the learned Additional District Judge, Palwal, vide which the appeal filed by them against the order dated 10.12.2008 passed by the learned Civil Judge (Jr. Division), Palwal was dismissed.

2. Respondents filed the suit for partition of the suit property. In the said suit, the preliminary decree was passed by the learned Additional Civil Judge (Sr. Division), Palwal, vide judgment dated 03.02.1998. The appeal filed against the preliminary decree by defendants/JD no.1 and 2 was also dismissed by the learned Additional District Judge, Faridabad, vide judgment and decree dated 28.08.1999.

Hence respondents/DH's have filed the application for passing the final decree, which was allowed by the learned Civil Judge (Jr. Division), Palwal vide order dated 10.12.2008. The appeal filed by the appellants against that order has also been dismissed by the learned Additional District Judge, Palwal, vide judgment dated 14.05.2011. Hence this appeal.

3. I have heard Mr. R.S.Chauhan, Advocate, learned counsel for the appellants, Mr. Sanjeev Kodan, Advocate, learned counsel for respondent no.1 and have carefully gone through the record of the case.

4. Initiating the arguments, learned counsel for the appellants contended that the final decree passed by the learned Courts below is contradictory to the preliminary decree. He contended that the preliminary decree was passed for partition of the land measuring 1 Kanal 10 Marlas. But, the final decree has been passed only qua the land measuring 10 Marlas and 1 Kanal land has been left out. Thus, he contended that the impugned order/judgment are illegal due partial partition.

5. On the other hand, learned counsel for respondent no.1 contended that the learned trial Court has left 1 Kanal of land as joint as the same could not have been effectively partitioned as it was in possession of the other persons. The same could be partitioned only when the same is repossessed by the parties. He contended that the final decree has been passed on the basis of the statement made by learned counsel for the appellants.

6. I have duly considered the aforesaid contentions.

7. The record of the case shows that Sh. K.P.S.Rana, Advocate, learned counsel for the appellant has made the statement before the learned trial Court on 11.11.1998 that he has no objection in passing the final decree. Thus, on the basis of the statement made by learned counsel for the appellants and the report of the Local Commission, the learned trial Court has passed the final decree. Once the final decree has been passed by the learned trial Court acting upon the statement made by learned counsel for the appellants in the learned trial Court, it does not lie in the mouth of the appellant to challenge the final decree.

8. Consequently, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 04, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No