

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CR No.5100 of 2017 (O&M)
Date of decision: 22.08.2017

Rakesh Kumar and others

..... Petitioners

Versus

Kulbhushan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Upasna Dhawan, Advocate
for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

Defendants-petitioners have filed this revision petition under Article 227 of the Constitution of India against the order dated 13.07.2017, dismissing the objections filed by the petitioners against mode of partition.

Plaintiffs had filed a suit for partition of the joint property. Learned trial Court passed a preliminary decree of partition on 30.07.2012. Thereafter, an application was made for preparation of the final decree. Learned trial Court appointed a Local Commissioner to visit the spot and propose the mode of partition. Local Commissioner visited the spot and submitted a report along with a site plan.

Defendant-petitioners filed objections to the effect that they are in settled possession pursuant to the sale deed and the propose mode of partition would result in unsettling the possession of the petitioners. Learned trial Court after appreciating the contention of both the parties, dismissed the objections filed by the petitioners vide order dated

13.07.2017, relevant extract thereof is as under:-

“I have perused the judicial file carefully. To my view, in the preliminary decree dated 30.07.2012 passed by the learned lower Court, already settled the matter that plaintiffs and defendants being the co-sharer in the suit property, therefore, present applicants are entitled to possession as per their share in the suit property. Therefore, the present objections filed on the same lines by the objector are not maintainable, because the applicants have already been granted preliminary decree to the effect that they are also have shares in the suit property and they are entitled for possession of the same. Furthermore, the objector merely levelled allegations unsupported by any evidence that local commissioner has prepared the record qua suit property in connivance with the applicants. Therefore, the present objections are devoid of any merits and hence are dismissed.”

Learned counsel for the petitioners has reiterated the assertions made in the objection petition.

This is not in dispute that the preliminary decree was passed by the Court on 30.07.2012. It was held that the plaintiff and the defendants are co-sharers in the suit property. The propose mode of partition which has been placed on the file as Annexure P-10 shows that defendants No.1 and 2 and the petitioners herein have been given plot proportionate to their share in the property. It is not the allegation that the petitioners have not been given their share in the proposed mode of partition. It is also not the case of the petitioners that they have been given less land on the front as compared to their share. It has been proposed by the Local Commissioner that the petitioners could be given plot having frontage of 21 feet, 6 inches. The total frontage of the joint property is 105 feet. Share of petitioners is $\frac{1}{5}^{\text{th}}$. Hence, the proposed mode of partition is in accordance with the

factual position.

In view of these facts, there is no ground to interfere with the order passed by the learned trial Court.

Revision petition is dismissed.

22.08.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No