

ESA No.209 of 2016(O&M)
Date of Decision: 18.09.2017

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

[3]. The share of appellants in the joint land was to the tune of $\frac{1}{6}^{\text{th}}$. A preliminary decree was drawn on 10.09.1992, wherein plaintiffs/respondents No.1 to 3 were declared to be owner to the extent of $\frac{1}{3}^{\text{rd}}$ share. Final decree was applied in which Local Commissioner was appointed. Local Commissioner gave his report dated 25.11.1998, wherein suggestive mode of partition was given. Khasra No.61(0-12) and 4 marlas towards

Southern side of khasra No.62 were suggested to be given to plaintiffs/respondents No.1 to 3. Khasra No.62 (0-12) and khasra No.65(1-1) were suggested to be given to the defendants. The objections filed by Masavi were dismissed. Final decree was drawn on 12.03.2005 and no further appeal was filed by anyone.

[4]. The question arises for consideration in the present appeal is to the effect that whether final decree has been drawn on the basis of report of Local Commissioner dated 25.11.1998 or the Local Commissioner report dated 17.08.2002 which was submitted on 19.08.2002 to the Court. As per Local Commissioner report dated 17.08.2002/19.08.2002, khasra No.65 was suggested to be given to the decree holder.

[5]. Perusal of the copy of final decree dated 12.03.2005 is suggestive of the fact that the final decree was drawn on the basis of Local Commissioner report dated 17.08.2002/19.08.2002 and Masavi filed objections to this report, which were dismissed by the Executing Court. The appellants never came to fore in those proceedings and the final decree dated 12.03.2005 has already attained finality. Even while drawing the final decree, there was no reference of Local Commissioner report dated 25.11.1998. After the dismissal of the objections filed by Masavi, no revision petition was filed in

the High Court.

[6]. In view of aforesaid attending facts and circumstances of the case, there is no scope for interference in the present execution second appeal. The present appeal is found to be totally bereft of merits and the same is accordingly dismissed.

September 18, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No