

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

RSA No.2148 of 2017

Date of Decision: 25.07.2017

Rajinder Pal (now deceased) through his LR's and others.....Appellants

Vs.

Lal Chand and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Anish Setia, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

The appellant-defendant has come up in appeal against the judgment of the trial Court dated 20.08.2014 and learned appellate Court dated 08.02.2017 whereby, the suit of the plaintiff/respondents-Lal Chand and Smt.Rao has been decreed by way of partition of the land measuring 17 marlas situated at Village Sammipur, Tehsil and District Jalandhar.

The brief facts of the case are that a local commissioner was appointed by the Court to submit a report of the property in question as partition-able or not. The local commissioner had made the report Ex.PW1/1 and site plan as Ex.PW1/2. The objections were raised by the defendant-Suresh Kumar that local commissioner had exceeded his jurisdiction and he has wrongly used measured the said plot by measuring with a scale of 272 sq.ft. Instead of 207 sq.ft. Both the objections have been dealt with by learned lower Court in its judgment which objection has been rejected by observing that on the basis of constructions raised on one part of the suit land, the local commissioner filed the suit land into two parts A and B and states that mode of partition inter alia mentioning the fact that suit

property was partition-able one. It had been correctly reported by the local commissioner that Suresh Kumar had raised construction over a part of the suit property. The site plan Ex.P1 was placed on record by the respondents and appellants have also placed and proved on record site plan of that property as Ex.D6. Both these site plans are identical to each other. Hence, there is no dispute in the mind of the Court with respect to identity of this property. The site plan furnished by the local commissioner dated 15.02.2014 fully tallies with the site plan filed by the appellant.

The other contention of the defendant was that the local commissioner had wrongly used the scale of 272 sq.ft. Instead of 207 sq.ft. However, the defendant had not placed on record any cogent material in support of its contention that the suit property had since become urban property since then. Further this Court was also of the view that the defendant had not placed on record any counter site plan. The defendants were in possession of the property shows as portion A and the trial Court, in equity, does not disturb the possession of the respondents in the said portion A of the suit property. The other portion Marked B in the suit property as depicted in the site plan attached to the said report was shown to be a vacant plot. The decree holders thus entitled to the possession over the vacant portion as shown as Marked B in the site plan. However, the total suit property was measuring 14.02 Marlas and the construction portion as depicted as portion A was measuring 7.62 Marlas (2075 sq.ft) and the vacant portion is measuring 7.30 Marlas (1985 sq.ft). However, as per the preliminary decree passed by the then CJJD, Jalandhar on 20.12.2017, in its relief clause, had decreed the suit of the plaintiff/decreed holder with costs for separate possession by way of

partition of the half share of the suit property. Thus, the half share of the suit property which comes to 7.46 Marlas (2030 sq.ft.) to be given to the decree-holders. Thus, the difference which comes to 45 sq.ft. Be also given to the decree holders. The defendants/respondents were directed to compensate the decree-holders for the are of 45 sq.ft. As per the market value of the constructed portion as shown Marked-A in the site plan attached to the said report and the market value of the same be assessed from an expert.

Learned trial Court has allowed the suit of the plaintiff on accepting the mode of partition as suggested by local commissioner who had appraised the nature of the suit property and depending upon the construction being raised on the one of the portion of the suit property, divided the same into two parts as Portion A and B. The decree holders thus entitled to the possession over the vacant portion as shown Marked-B in the site plan and the portion A of the suit property as depicted in the site plan shows that appellants/defendant to be in possession of the same.

Learned appellant Court has affirmed the judgment of the trial Court on the basis of same ground as mentioned hearinabove.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

25.07.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No