

**128+120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4552-2018 (O&M)
Date of Decision: 24.07.2018

Chander Singh (Since deceased) through
his LRs Jai Singh and othersPetitioners

Versus

Smt. Dhanpati (since deceased) through
her LRs and othersRespondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Harkesh Manuja, Advocate
for the applicants/petitioners.

DEEPAK SIBAL, J. (ORAL)

Through the present petition, challenge is made to the order dated 14.05.2018 passed by the Civil Judge (Senior Division), Sonapat (for short 'the Executing Court') through which the objections filed by the petitioners have been rejected.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that in the year 1976 Chander Singh, who was the predecessor-in-interest of the petitioners, along with others, filed a suit in which, amongst others, husband of respondent No.1 was a defendant. Through that suit the plaintiffs therein sought a declaration to the effect that they be declared owners of possession of the land described in the head note of the plaint. That suit was decreed on 22.08.1978. However, on an application filed by the husband of respondent No.1, the aforesaid decree dated 22.08.1978 was corrected through an order dated 22.08.1984 to now include therein the properties mentioned in para 4 of the plaint which reads as under:-

“4. That Sh. Sis Ram had in his life time and through a will dated 10.12.1961 made a family arrangement of the land in suit and bequeathed his entire property in favour of his five sons and depriving his three daughters from inheriting his share of the property. All the three daughters of the said Sh. Sis Ram deceased namely Smt. Bharto, Darkan and Chhoti also affixed their thumb impressions on the said will in the token of having accepted the will and in token of their deprivation from succeeding to the property of Sh. Sis Ram deceased. The family arrangement was made in the manner given herein under:-

(i) Ram Saroop:- land measuring 43K. 18 Marlas comprised in Rect. & Killas No. 13, 12, 26, 26

16,	25	21	2(half),	18	19min,	22
8-0	8-0	3-16	3-9	7-17	4-16	8-0

(ii) Bharat Singh @ Bharta:- land measuring 43K. 17 Marlas comprised in Rect & Killa No. 13, 26, 26, 31/10(3-4)

17	24	2(half)	11/2	20	21	19min
8-0	8-0	3-9	2-0	8-0	8-0	3-4

(iii) Siri Lal:- land measuring 43K. 3 Marlas comprised in Rect. & Killa No. 13, 26, 30

19	22	21M	23/1	23/2	1	3	8
8-0	8-0	4-0	3-6	2-19	8-0	7-16	1-2

(iv) Moji:- land measuring 47K. 15 Marlas comprised in Rect. & Killa Nos. 26 30

18	23	21M		12	12
8-0	8-0	4-0	8-0	8-0	8-0

In addition to the lands the Chah Gorewala comprised in Killa No.22/28 was inherited by Sarvshri Ram Saroop, Bharta, Siri Lal, and Ude Singh in equal shares and plot No.53 was inherited by Sarvshri Ram Saroop, Bharta and Ude Singh in equal shares and plot

No.53 was inherited by Sarva Shri Ram Saroop, Bharta, Ude Singh, Siri Lal and Moji Ram in equal shares.”

On the basis of the aforesaid decrees dated 22.08.1978 and 22.08.1984, the respondents instituted a suit for possession by way of partition which was decreed on 19.11.1990. The petitioners who were the defendants therein, filed an appeal against the decree dated 19.11.1990 which was dismissed by the Appellate Court on 26.02.2013. The decree dated 19.11.1990 as also the order of the Appellate Court dated 26.02.2013 was challenged through filing of a second appeal in this Court which, on 05.03.2014, met the same fate as their first appeal. The petitioners carried their challenge to the Hon'ble Apex Court by way of a Special Leave Petition which was also dismissed on 13.10.2014.

The dismissal of the Special Leave Petition should have brought the matter to an end. However, that was not to be as on 19.03.2015 the petitioners filed their objections in the pending execution proceedings filed by the respondents way back in the year 2011 to execute the aforesaid decree. Such objections have been dismissed through the order which is under challenge in the present petition.

On being put a specific query by the Court, learned counsel for the petitioners does not dispute that the objections filed by the petitioners were only based on the properties referred to in the un-amended decree dated 22.08.1978 and not on the properties which formed the subject matter of the amended decree dated 22.08.1984. It is further not disputed that in the light of the amended decree dated 22.08.1984 the objections filed by the petitioners would have no legs to stand. Thus, all that the petitioners are

trying to do is to create confusion and delay the execution proceedings by filing objections based on the unamended decree dated 22.08.1978 which admittedly was amended on 22.08.1984.

In view of the above as also for the reason that the preliminary decree in the case in hand was drawn on 19.11.1990 and subsequently, the final decree on 24.12.2010 during which time as also for about five years thereafter, the petitioners did not raise any objection as sought to be raised by them during the present proceedings, they cannot be allowed to do so at this stage, especially, when their objections are only based on a decree which in the presence of the husband of respondent No.1 was later amended.

(DEEPAK SIBAL)
JUDGE

24.07.2018
Neha

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