

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

C.R. No.5002 of 2015 (O&M)

Surender Kumar Sharma and Anr.

....Petitioners

Versus

Suresh Chand Sharma and Ors.

(Deceased) through LRs.

....Respondents

Date of Order: 27.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate for the petitioners.

Mr. Dinesh Kumar Jangra, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

CM No.15994-15995-CII/2015

Prayer made in both the applications filed under Rule 3 Chapter 1-C of the High Court Rules and Orders Vol. V read with Order 22 Rule 4 and Section 151 CPC is for impleading the legal representatives of Respondent No.1 and respondent No.6-A respectively.

Respondent No.1-Suresh Chand Sharma died on 31.10.2014 leaving behind his legal representatives as indicated in para 2 of the application bearing CM No.15994-CII of 2015 whereas respondent No.6-A-Anup expired on 14.11.2014 leaving behind his legal representatives as mentioned in para 2 of application bearing CM No.15995-CII of 2015.

For the reasons stated in the applications, the same are allowed subject to all just exceptions. LRs of respondent No.1 and respondent No.6-A are ordered to be impleaded as party.

Necessary corrections be carried out in the memo of parties.

C.R.No.5002 of 2015

Petitioners are aggrieved of the impugned order dated 11.5.2015 passed by learned Addl. Civil Judge (Sr. Division), Rewari whereby their application filed under Sections 151,152 and 153 CPC for rectification of the decree dated 29.3.2011 has been dismissed.

Learned counsel for the petitioners submitted that the suit for possession by way of partition filed by the petitioner was decreed vide preliminary decree dated 29.3.2011 observing as under:

“As a sequel to the discussion above stated, the preliminary decree for partition is passed in favour of the plaintiffs regarding the partitioning of the suit property by metes and bounds bearing house tax No.6261 situated at Chippatwara, Rewari and separating the possession of the parties by metes and bounds. Also, defendant no.1 to 6 are restrained from alienating and transferring the whole property showing themselves as owner of the whole property and from changing the nature of the suit property and from demolishing the house in dispute and a decree for permanent injunction is granted in favour of the plaintiffs. Suit of the plaintiffs is decreed along with costs. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

Decree sheet was also in tandem with the aforesaid facts. Similarly House Tax No.6261 has been wrongly mentioned in para 19 of the said decree whereas it is in fact 6267. Moreover the share of the parties was not even determined. In these background, necessity arose to move the application but the trial Court while partly allowing the application ordered that House Tax No.6261 be substituted by No.6267. However, it was made clear that at the time of passing final decree, the Court may determined their

respective shares as well as their respective portions in accordance with law.

On the other hand, learned counsel for the respondent submitted that there is no illegality and perversity in the impugned order. The only remedy available was under Section 153 CPC and not under Sections 151 read with section 152 CPC as has been rightly observed. He thus prayed for dismissal of present revision.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that the finding given by the trial Court in not determining the share while passing the decree is not correct and suffers from infirmity. The purpose of passing the preliminary decree is only to determine the shares whereas the final decree is drawn by partitioning of the property by metes and bounds. In the absence of determined shares, the trial Court cannot be able to proceed further for drawing the final decree.

In these circumstances, the finding of the trial Court is not sustainable in the eyes of law. Consequently, the present petition is allowed and impugned order dated 11.5.2015 is set aside. The trial Court is directed to carry out rectification in the decree by determining the shares of the parties i.e half share of the petitioners along with proforma respondents and other half share of contesting respondent Nos.1 to 6.

April 27, 2018
manoj

^(AMIT RAWAL)
JUDGE

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