

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3189 of 2011 (O&M)
Date of Order:07.02.2018

RAJA RAM AND ORS

..Appellants

Versus

SANTOSH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulbhushan Sharma, Advocate,
for the appellants.

Mr. Ajay Jain, Advocate,
for respondent no.

Mr. Rajesh Goyal, Advocate, for
Mr. Pritam Saini, Advocate,
for respondents no.2 and 3.

ANIL KSHETARPAL, J.

It is unfortunate that the parties are litigating for a very small and petty dispute.

Defendants are in appeal against the judgment passed by the learned trial court, passing a final decree which was affirmed by the first appellate court.

It is not in dispute that the plaintiff has been held entitled to 1/3rd share of the entire property i.e. 15 marlas out of total 45 marlas.

During the pendency of the appeal, this court vide order dated 05.04.2016 directed appointment of a Local Commissioner to submit a report. The order reads as under:-

Defendant Nos.1 to 3 are in regular second appeal before this Court viz-a-viz the drawing of the final decree. As per the judgment and decree dated

13.11.2001, the plaintiff had sought her 1/3rd share by admitting half share of defendant Nos.1 to 6, whereas remaining defendants have 1/12th share each. The site plan placed on record on behalf of the appellant(s)-defendant(s) Ex.DW-3/A at page 59, shows that all the co-owners are having either more or lessor area than one they actual have. As per the mode of partition suggested by the Local Commissioner and according to Mr. K.B. Sharma, learned counsel for the appellant(s)-defendant, the share of other defendants has not been determined. The portion shown in yellow is constructed portion, whereas the share of the plaintiff has carved out of the blue portion, which according to the respondent-plaintiff and the Local Commissioner is a vacant area. He submits that in a suit for partition, even if, the defendants have not contested, asked for separate possession, the share of all co-owners is to be determined at the time of the final decree, the site plan has to be prepared, thus, keeping in view the shares of all the parties in tact including the constructed portion, the Local Commissioner has not undertaken the job of determining the share of all the co-sharers aforementioned, by taking into constructed portion.

Mr. Ajay Jain, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that defendant Nos.1 to 6 and remaining defendants are hand in glove with each other and intentionally delaying the execution of the decree, much less, actual share of the plaintiff, the Local Commissioner has also not touched the constructed portion by not destroying constructed portion. He submits that in order to honour and respect the preliminary decree, the regular second appeal be kept pending and the Local Commissioner be directed to determine the share of all the parties to the lis as per their respective shares by touching the constructed portion.

I have heard the learned counsel for the parties and appraised the paper book and of the view that in a suit for partition, even if, one of the parties has claimed separate possession of 1/3rd share, by drawing the preliminary decree, the share of other parties has to be determined, whereas, this exercise has not been done by the Local Commissioner.

Accordingly, I directed the trial Court to appoint a revenue official of the rank of Tehsildar with a direction demarcate and identify by allocating the portion as per their respective shares and submit his report on the next date of hearing.

Adjourned to 14.07.2016, for awaiting the report of Local Commissioner.

The order be sent to the District Judge concerned for compliance.

Pursuant to the aforesaid direction, a report has been submitted by the Local Commissioner. Plaintiff-respondent has filed objections submitting that the proposed mode of partition by the Local Commissioner is not acceptable as she is being allotted only 5 marlas plot leaving the plaintiff to take possession of remaining 10 marlas from the houses of Bhoop Singh and Chabil Singh. The report is obviously perverse. Plot being allotted to the plaintiff is also stand sandwiched in between various defendants.

In the report submitted by the Local Commissioner appointed by the trial Court, plaintiff-respondent was proposed to be allotted vacant plot situated towards Southern-Eastern side of the property in dispute on one side. However, as per report dated 30.05.2016, which has been submitted to this court, the proposal creates more problem for the plaintiff than to solve it.

At this stage, it is not in dispute that the plaintiff is entitled to 15 marlas plot. Plaintiff had come to court claiming that the defendants are not allowing her to enjoy the suit property and therefore, her share be separated.

In this situation, the portion which is proposed to be allotted to the plaintiff is sandwiched between various defendants. Troubles of the plaintiff would not come to an end if the proposal in the report dated 30.05.2016 is implemented. Defendants would keep troubling the plaintiff.

Both the courts have already examined the objections of the appellants to

the proposed mode of partition and rejected the same. The courts below have passed a final decree accepting the proposal made by the Local Commissioner appointed by the trial court.

In view of the above, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below. If the defendants have any inter-se dispute, they shall be free to file an application without disturbing the share allotted to the plaintiff.

The regular second appeal is dismissed.

Note: All the miscellaneous applications, if any, pending shall stand disposed of.

February 07, 2018
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(ANIL KSHETARPAL)
JUDGE

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