

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

**RSA No.3289 of 2013 (O&M)
Date of Order: 03.05.2018**

Kundan

..Appellant

Versus

Dwarika Parshad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Partap Singh, Advocate,
for the appellant.

Mr. Rohit Rana, Advocate, for
Mr. Kunal Dawar, Advocate,
for respondents no.1 to 24.

ANIL KSHETARPAL, J (Oral)

Legal heir of defendant no.6 is in appeal against the judgment passed by the courts below, passing a final decree.

It is not in dispute that the parties to the litigation are co-owners and in a suit for partition filed on 06.05.1989, a preliminary decree was passed. Application for final decree was filed on 27.03.1990.

Court in order to carry out amicable partition of the property, appointed experts who visited the spot and prepared reports. As many as 5 experts were appointed, objections were filed against the report of all of them. 4 reports were rejected, whereas 5th one submitted by Sh. Y.K.Goyal, who is a qualified engineer, having experience in the filed of supervision, estimation, designing of commercial, industrial and residential building, has been accepted by the courts.

Both the courts have found that as suggested in the report, this is the only possible method to partition the property. Courts have further noticed that certain co-owners are in possession of property more than their share and they have been repeatedly filing objections and not allowing partition to complete.

Learned first appellate court has noticed that how some of the co-owners are in possession of the land in excess of their share. Para 13 of the judgment passed by the first appellate court is extracted as under:-

“13. Further perusal of the valuation report submitted by the Local Commission Shri Y.K.Goyal, shows that he considered the fair market value, location, possession of the share holders and collector rates in respect of the suit property. He has also annexed the rates of commercial plots with his report. From the report of the local commission, it is clear that the legal heirs of Ram Dutt are entitled for the area of 947.40 square yards. Actually, on the spot they are in possession of 607.41 square yards area. In this way, they are in possession of 340 square yards less area. The legal heirs of Vidhur are entitled for the area of 947.40 square yards. Actually, on the sport they are in possession of 615.00 square yards area. In this way, they are in possession of 332 square yards less area. Similarly, the legal heirs of Jugal Kishore are entitled for the area of 947.40 square yards. Actually, on the spot they are in possession of 953.62 square yards. In this way, they are in possession of 5 square yards excess area. Nanda/Madan are entitled for the area of 236.90 square yards. Actually, on the spot they are in possession of 838.00 square yards area. In this way, they are in possession of approximately 602 square yards excess area. Further, the legal heirs of Rameshwar are entitled for the area of

947.40 square yards. Actually on the spot they are in possession of 1011.52 square yards area. In this way, they are in possession of 64 square yards excess area. Similarly, the legal heirs of Rishi Dutt are entitled for the area of 947.40 square yards. Actually, on the spot they are in possession of 895.35 square yards area. In this way, they are in possession of approximately 52 square yards less area.”

Present appeal has been filed by the legal representative of Rameshwar who is found to be in possession of excess 64 square yards area, than their entitlement. The application for final partition has remained pending for almost 28 years.

Although, learned counsel for the appellant has vehemently argued that the objections filed by the appellants have not been considered as there is a difference in the valuation. However, taking into consideration the fact that Sh. Y.K.Goyal, who was appointed to suggest a mode of partition has considered the market value, location, possession of the share holders and the correct collector rate while suggesting a mode of partition, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

May 03, 2018
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(ANIL KSHETARPAL)
JUDGE

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