

In the High Court of Punjab and Haryana at Chandigarh

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CR No.293 of 2017 (O&M)

Date of decision: 2.5.2019

TRIPTA RANI & ORS

.....petitioners

Versus

OM PARKASH & ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr.Vikram Anand, Advocate
for respondents No.1 to 5.

RAJ MOHAN SINGH, J.(oral)

Petitioners are aggrieved against the order dated 8.9.2016 passed by the Civil Judge (Jr.Divn.), Khanna and also sought directions to the trial Court to proceed with the case in accordance with law.

In a suit for separate possession by way of partition, the trial Court granted preliminary decree vide judgment and decree dated 13.8.2014. During the course of proceedings before the trial Court, site plans Ex.P-1 to Ex.P-3 were duly exhibited by the plaintiffs. Site plan Ex.P-2 showed existence of street in yellow colour. Site plans were admitted by Om Parkash in his cross-examination. Preliminary decree was passed and Sh.B.K.Bhambri was appointed as Local

Commissioner to suggest the mode of partition. In the report of Local Commissioner, the land under the street was given to the petitioners by observing that there is no street at the site. Local Commissioner prepared site plan and proposed to give the block, as shown in blue colour, to the petitioners including the area of street.

The grievance of the petitioners is that once the site plans Ex.P-1 to Ex.P-3 were duly exhibited and admitted by the respondents, the Local Commissioner cannot go beyond the records as he was never asked to opine on the existence of street or otherwise. At the time of drawing of final decree vide order dated 7.4.2016, a specific issue was framed whether there exists a street as per site plan Ex.P-2, in the suit property or not ? The onus was on the petitioners. Since Ex.P-2 i.e. the site plan was adduced by the petitioners themselves before the trial Court, therefore, the admission qua the document in question in the cross-examination of Om Parkash ought to have been considered by the Court in accordance with law. It appears that the impugned order has been passed solely on the basis of site plan prepared by the Local Commissioner showing existence of no street.

In view of above, I am of the considered opinion that the trial Court has not adverted to the facts on record, while

passing the impugned order. The trial Court needs to be directed to re-visit the issue in the light of evidence on record.

The impugned order is therefore, set aside. Trial Court is directed to decide the issue afresh after considering the material on record and hearing the parties.

Petition stands disposed of accordingly.

May 02, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No