

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

RSA No.1571 of 2019 (O&M)
Date of Decision: March 25, 2019

Ranjit Singh

...Appellant

Versus

Charan Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Naveen Batra, Advocate
for the appellant.

Mr. Satbir Rathore, Advocate
for caveator/respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been directed against the judgment and decree dated 15.12.2018 passed by the lower Appellate Court whereby, the appeal filed by the appellant-defendant against the judgment and decree dated 22.07.2014 passed by the lower court has been dismissed.

2. In brief, the facts of the case are, that respondent No.1-plaintiff filed a suit for separate possession over the suit property, which suit was decreed by the lower court and preliminary decree was passed in favour of respondent No.1-plaintiff for separate possession of land measuring 2 marlas, being 1/3rd share of 6 marlas, by way of partition of suit property by metes and bounds. The appeal filed by predecessor-in-interest of the appellant (Baghel Singh) against the said preliminary decree was dismissed

by the lower Appellate Court on 11.04.2009. Thereafter, an application for passing the final decree of partition was preferred by respondent No.1-plaintiff, to which objections were filed by the appellant herein being LRs of Baghel Singh. The lower court, appointed a Local Commissioner with the direction to visit the suit property and to suggest the mode of partition in terms of the preliminary decree dated 18.11.2005, who vide his report and site plan suggested the mode of partition. The portion shown in red colour, in the site plan was allotted to respondent No.1-plaintiff and the portion shown in the yellow colour to the appellant-defendant. The objections filed by the appellant-defendant were dismissed and final decree for partition was passed on the basis of mode of partition suggested by the Local Commissioner. Being aggrieved against the passing of the final decree, the appellant-defendant preferred an appeal before the lower Appellate Court, which appeal was partly allowed. Both the judgments and decrees passed by the courts below are assailed by the appellant-defendant in this regular second appeal.

3. Learned counsel for the appellant-defendant argues that both the courts below while passing the impugned judgments and decrees failed to appreciate the fact that the suit property has been developed and constructed by predecessor-in-interest of the appellant-defendant by spending huge amount, but the courts below failed to compensate the appellant-defendant. It is also argued that after dividing the suit property into three shares, the area which would be left, would be so small and the same would not be usable, therefore, the appellant-defendant filed an application under Sections 2 and 3 of Partition Act in order to purchase the

said share at the market price, but the same has been wrongly dismissed by the lower Appellate Court.

4. Per contra, learned counsel appearing on behalf of caveator/respondent No.1 argues that the judgments and decrees passed by the courts below are well reasoned, as such, no ground is made out to interfere with the same.

5. I have heard learned counsel for the parties and have gone through the case file.

6. After the passing of the preliminary decree, an application for passing the final decree was moved by respondent No.1-plaintiff, in which objections filed by the appellant-defendant were dismissed by the lower court by holding that since the preliminary decree of partition has attained finality, it cannot be interfered. Thereafter, the lower court proceeded to appoint a Local Commissioner to suggest the mode of partition, who visited the suit property and submitted his report along with the site plan Annexure-A. The lower court accepted the mode of partition suggested by the Local Commissioner and the portion, as shown in the red colour in the site plan, was allotted to respondent No.1-plaintiff and the portion, as shown in the yellow colour, was allotted to the appellant-defendant and accordingly passed the final decree.

7. The lower Appellate Court, while partly accepting the appeal filed by the appellant-defendant, has observed as under:-

“15. Thus, so far as the order dated 22.07.2014 whereby the final decree has been passed is concerned, the same does not warrant any interference except for the fact that during the pendency of the present appeal, appellant filed site plan suggesting the mode of partition acceptable to

which counter site plan has been filed by respondent in consonance with the dimensions of khasra no.54R/44/2017 measuring 6 marlas (the western side of the said khasra number, which abuts the road, is 5 karams in length, northern and southern sides are 11 karams each in length and eastern side is 6 karams in length). The learned counsel for the respondent also filed measurement of the said area which comes to 599.95 sq. ft. i.e. less than 600 sq. ft. of 1800 sq. ft. area being 1/3rd share of 6 marlas area.

16. Since the site plan now filed by respondent, which is being marked as Ex.C1 for the purpose of present order, is more acceptable to both the sides, the Final decree passed by the court below is modified to the extent that the area shown in yellow colour measuring 9 ft. 2 inch on the western side, 11 karams each on northern and southern side and 10 ft. 8 inch on eastern side, as shown in yellow colour in the site plan Ex.C1 is allocated to Charan Singh plaintiff, the possession whereof shall be delivered to Charan Singh in the execution filed by Charan Singh, which is already pending in the court which passed the decree.

17. The appeal is, accordingly, accepted partly and decree passed by the court below is modified..... xxx xxx xxx”

8. So far as other contentions raised by learned counsel for the appellant-defendant are concerned, the lower Appellate Court has observed that the provisions of Section 2 and 3 of the Partition Act are not applicable to the present case, which has been instituted after the commencement of Partition Act, 1893. The lower Appellate Court also rejected the argument of the appellant-defendant regarding non-partition of the construction raised by his predecessor-in-interest over the suit property, while relying upon judgments of the Apex Court and the Allahabad High Court that exclusive ownership rights cannot be claimed by a co-sharer over construction so raised on undivided family property and the same would fall within the purview of joint undivided property.

9. In the instant case, the lower court has passed the final decree

on the basis of mode of partition suggested by the Local Commissioner. The lower Appellate Court has modified the decree passed by the lower court only to the extent of mode of partition, as agreeable by both the parties before it. The preliminary decree passed by the lower court has already attained finality. This court is of the considered opinion that both the courts below have rightly rejected the arguments so raised by learned counsel for the appellant-defendant.

10. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-defendant, which has no merit.

11. Dismissed.

March 25, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No