

In the High Court of Punjab and Haryana at Chandigarh

202

CR No. 1000 of 2019

Date of decision: 03.09.2019

FATEH SINGH AND ANR

.....petitioners

Versus

JAIPAL AND ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

RAJ MOHAN SINGH, J.(oral)

As per office report, both the respondents have been served, but none has appeared on their behalf. Therefore, they are proceeded against ex parte.

Notice of motion was issued on 20.2.2019 by passing the following order:-

“Learned counsel for the petitioners contends that in a suit for partition, every plaintiff is a defendant and every defendant is a plaintiff. Each one has to get his due share. Petitioners namely Fateh Singh and Satbir are defendants No.25 and 28 having 1/9th and 1/18th share respectively in the joint property. No preliminary decree was drawn in respect of their entitlement.

Learned counsel relies upon Surjit Kaur vs Rani Manchanda 1998(2) RCR (Civil) 668 to contend that

necessary modification can be made in preliminary decree. In appropriate cases, even drawing of preliminary decree is not necessary. Learned counsel refers to Shub Karan Bubna @ Shub Karan vs Sita Saran Bubna and others, (2009) 9 Supreme Court Cases 689.

Notice of motion for 30.04.2019.

Till the next date of hearing, passing of final decree shall remain stayed.”

Grievance of the petitioners is that they were impleaded as defendant Nos. 25 and 28 in the suit for partition filed by the plaintiffs/ respondents No.1 and 95. Petitioners have defined shares of 1/9th and 1/18th respectively in the joint property. While drawing the preliminary decree, the shares of the petitioners were not considered.

An application was filed by the petitioners for making necessary correction in the context of separating the shares of the petitioners at the time of drawing final decree. There was no objection shown by the plaintiffs on the said application and it was so recorded in the impugned order. The trial Court still dismissed the application on the premise that at the time of drawing preliminary decree dated 30.1.2015 by the trial Court, only shares of the plaintiffs were separated. Shares of other

defendants were not defined.

After hearing learned counsel for the petitioners, I am of the considered view that the impugned order suffers from material illegality. Modification can be made in the preliminary decree and drawing of even preliminary decree is not sine qua non in an appropriate case in view of ratio laid down in **Shub Karan Bubna @ Shub Karan vs. Sita Saran Bubna and others, (2009) 9 Supreme Court Cases 689.** The impugned order needs to be revisited by the trial Court after appreciating the attending circumstances of the case, particularly when no objection was shown by the plaintiffs on the application filed by the petitioners. In a suit for partition, every plaintiff would be defendant and vice versa because all the co-sharers are entitled for separation of their shares in accordance with law.

At this stage, without meaning anything on the merits of the case, the impugned order dated 10.10.2018 passed by the Additional Civil Judge (Sr.Divn.), Kosli is set aside. The case is remanded to the trial Court to pass a fresh order in accordance with law.

Petition stands disposed of accordingly.

September 03, 2019

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Whether reasoned/Speaking

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No