

RSA-4137 of 2019 (O&M)

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

RSA-4137 of 2019 (O&M)
Date of decision: 05.09.2019

Ramji Lal (deceased) through his LRs

.....Appellants

versus

Nihala (since deceased) through his LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. R.A. Sheoran, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Legal heirs of defendant No.11 have filed this Regular Second Appeal against judgment and decree of the first appellate Court dated 18.07.2019, affirming final judgment and decree of the trial Court dated 14.07.2015.

Briefly, trial Court in a suit for partition filed by respondents No.1 (a to e), after holding trial passed preliminary decree dated 17.05.2011. Local commissioner was appointed to suggest the mode of partition, who suggested two modes of partition vide his report dated 25.08.2014. Objections of respondents-plaintiff to the same were allowed. Consequently, local commissioner was re-directed to prepare a fresh report. Pursuant thereto, he submitted his report dated 03.03.2015 and again suggested two modes of partition.

Being aggrieved, legal heirs of plaintiff again filed objections, raising grouse that as per modes suggested by local commissioner, they

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were allotted land at six places instead of allotting their share in khasra No.279(1-2) and khasra No.277 min (0-18). Dismissing their objections vide order dated 14.07.2015, trial Court drew final decree, accepting one of the modes suggested by the local commissioner in his subsequent report dated 03.03.2015 making the site plan prepared by local commissioner as part of it.

Being aggrieved, appellants approached the first appellate Court, but remained unsuccessful as their appeal was dismissed with costs vide judgment and decree dated 18.07.2019.

Learned counsel for the appellants *inter alia* contends that both the Courts below failed to appreciate that appellants were co-sharers to the extent of 1 kanal 11 marlas, but by virtue of final decree had been allotted 1 kanal 10 marlas i.e. one marla short, that too disturbing their settled possession over specific khasra No.279.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

It is apparent from the record that four modes of partition were suggested by the local commissioner i.e. two vide report dated 25.08.2014 and on objection of the plaintiffs, two vide report dated 03.03.2015. Against all the four reports, the appellants raised objection. Accepting objection against the earlier two reports, Local Commissioner was directed to prepare fresh mode of partition. For the second time, objection of the appellants against fresh two modes of partition were rejected by the trial Court. The appellants did not challenge order of the trial Court rejecting

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their objections in higher Court by way of appeal or revision. Hence, order rejecting objections of the appellants of the trial Court attained finality. Trial Court, thereafter passed final decree.

Now, for the first time, the appellants in appeal laid challenge to the final decree passed by the trial Court accepting one of the modes out of two fresh modes suggested by the Local Commissioner. The findings of the trial Court, while ordering to prepare final decree are reproduced hereunder:

“4. A very careful perusal of the Local Commissioner Report would show that he has allocated the shares to each and every co-sharers taking into consideration their existing possession upon the suit property. At this juncture, it is pertinent to mention that the preliminary decree dated 17.05.2011 was passed on the basis of the Jamabandi for the year 2001-02. However, in between this period, Har Narayan executed a Sale deed no.951 dated 04.09.2007 alienating 1 kanal land and Mutation no.598 was sanctioned. Har Narayan died on 15.01.2008 and his inheritance Mutation no.609 was sanctioned. Nokha @ Norang son of Nanu expired on 18.03.2008 and his inheritance Mutation no.610 was sanctioned. Sajjana, Bhateri, Kamla and Sharwan Singh, children of Badlu sold 1 kanal 2 marla land by way of Mutation no.603. During the course of present application, even the applicant Nihala expired and his Legal Representatives were impleaded on record. Therefore, the number of actual co-sharers have chanded at present since the date of passing of preliminary decree dated 17.05.2011. The Local Commissioner Report dated 03.03.2015 has been prepared keeping in consideration the existing possession of all the

stakeholders as per Jamabandi for the year 2011-12. The plea of the Legal Representatives of applicant Nihala in their objection petition that they should be given their share of 2 kanal at two places cannot be considered as tenable for the reasons that as per the Local Commissioner Report, they are already in possession upon Khasra no.260 (0-4), Khasra no.146 (0-4) and Khasra no.148 (0-6) i.e. total measuring 14 marlas. Similarly, other co-sharers are also in possession of other khasra numbers by constructing their residential houses. The co-sharers who are in possession of excess share have also been duly dealt with by the Local Commissioner in his Report.

5. This Court is of the view that in order to maintain minimum disturbance and interference in the existing possession of the co-sharers, mode no.1 suggested by the Local Commissioner in his Report dated 03.03.2015 would be the most appropriate method to partition the suit property in between all the co-sharers. In such circumstances, this Court is of the view that the objections filed by the Legal Representatives of applicant Nihala are without any merit and stands dismissed.

6. In view of above discussion, the present application is allowed to the effect that the final decree of partition of the suit property measuring 12 kanal 1 marla is passed in accordance with Mode no.1 of partition suggested by Local Commissioner in his Report dated 03.03.2015. Final decree be prepared accordingly. Local Commissioner Report dated 03.03.2015 as well as the appended site plan shall also be made part of the final decree. No order as to costs. File be consigned to record-room after due

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compliance.”

Learned counsel for the appellants has not been able to point out any illegality or perversity in the above observations of the trial Court.

Thus, this Court is not inclined to interfere with the above findings of the learned trial Court.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

Dismissed.

(Ramendra Jain)
Judge

September 05, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No