

252

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

**RSA No.4521 of 2014 (O&M)
Date of Decision: 24.01.2019**

Teja Singh and others

..... Appellants

Versus

Baljit Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

Mr. R. N. Singhal, Advocate
for respondent No.1.

SUDIP AHLUWALIA J. (ORAL)

The final Decree of partition dated 04.02.2012 passed by the Ld. Additional Civil Judge (Senior Division), Talwandi Sabo in the proceedings arising out of the original Civil Suit No.1237 dated 10.09.2004 of the Court of Ld. Civil Judge (Junior Division), Talwandi Sabo decided on 15.09.2008, has been challenged in this appeal.

2. Such final Decree with which the respondents-original plaintiffs are otherwise not aggrieved, was on the basis of the report of the Local Commissioner, who had been entrusted with the responsibility to draw of the same on the basis of the preliminary Decree.

3. The Ld. Court below accepted the said report without any

modifications as would be clear on perusal of the following concluding observations of the impugned order dated 04.02.2012:-

“18. So in terms of preliminary decree passed in Civil Suit No.1237 of 15.09.2008, a final decree is passed in favour of applicant and against respondents. This final decree is passed in favour of applicant on the basis of report of Local Commissioner dated 05.08.2011 vide which he has suggested the mode of partition. So issue No.1 stands decided in favour of applicant and against respondents.

19. So in view of my above said discussion, final decree stands passed in favour of applicant and against respondents. Report of Local Commissioner dated 05.08.2011 along with the site plan Ex.AW2/D and Ex.AW2/B and Ex.AW2/C annexed with his report is made part of the decree. Final decree be prepared.”

4. Ld. counsel for the appellants-original defendants No.18, 20 and 25 are, however, aggrieved with the said Decree since according to them, they stand to be displaced from that portion of the suit land of which they are in actual occupation, and that this inspite of the fact that the Ld. Local Commissioner in his report had specifically mentioned about the existence of structures raised by some persons namely, Joginder Singh and Naib Singh in Khasra No.265/71 (0-7), of which they are in “illegal possession”. Admittedly such illegal occupants were never parties to the original civil proceedings, and therefore legitimizing their occupation by way of enforcement of a decree for an otherwise unpartitioned land is certainly improper and prejudicial to any given set

of co-sharers.

5. For the above reasons, the impugned final Decree passed on the basis of the Local Commissioner's report (Annexure A-2) is liable to be set aside.

5. On submission of Ld. Counsel for both the sides, the matter is, therefore, remanded back to the Ld. Trial Court for re-determination after confirming about the status of the alleged trespassers on the suit land. In case, they are found to have any legitimate interest in any part of the property by way of having derived title from any of the original co-sharers, such factor would be taken into account, and in case they are found to be rank trespassers, no Decree in favour of any of the legitimate co-owners shall be drawn up in such manner as to award such illegally occupied area in favour of any such co-sharer.

6. Parties are directed to appear before the Ld. Trial Court on 13.03.2019.

7. Status quo be preserved till the final Decree.

January 24, 2019

rittu

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No