

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

**RSA No.5152 of 2018 (O&M)
Date of Decision:22.01.2019**

Harmit Singh and others

.....Appellants

Versus

Bhajan Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.J.S.Dhaliwal, Advocate
for Mr. H.S.Brar, Advocate
for the appellants.

LISA GILL, J.

CM-1056-C of 2019.

Preliminary decree dated 14.01.2010 (Annexure A-1), is taken on record subject to just exceptions.

Application is disposed of.

R.S.A No. 5152 of 2018.

Appellant-defendants are aggrieved of judgment and decree dated 31.01.2017, passed by the learned Civil Judge (Jr. Division), Rupnagar, as well as judgment and decree dated 23.03.2018, passed by the learned Additional District Judge, Rupnagar, whereby final decree in favour of respondent no.1, has been passed.

Brief facts necessary for the adjudication of the case are that respondent no.1-Bhajan Singh (DH) had filed a suit for possession by way of

partition of his share from the defendants in the property comprised in khasra no. 1181/130/1, Khasra no. 48//27/2(0-8) along with all structure, construction including the shops as per the copy of jamabandi for the year 2001-02 as detailed in his plaint. Civil suit No. 258 dated 04.05.2007 filed by Bhajan Singh was decreed in his favour by the learned Civil Judge (Sr. Division), Ropar vide judgment and decree dated 14.01.2010. It was held that Bhajan Singh was entitled to possession by way of partition of his 13/72 share from the estate of Ram Chand son of Aasa Ram son of Baru besides the plaintiffs share of 45/72. 5 Marlas of land out of khasra no. 48//27/2 had been claimed to be purchased by Bhajan Singh vide sale deed dated 22.12.1992 from Ram Chand and Ram Murti. It was conclusively held in the judgment and decree dated 14.01.2010 that Bhajan Singh was recorded to be the co-owner in 45/72 share. Ram Chand son of Aasa Ram son of Baru was recorded to be the co-owner to the extent of 13/72 share in khasra no. 48//27/2. It is specifically held in the said judgment and decree that partition of the said property, among co-owners was never carried out. The parties were accordingly restrained from alienating, constructing and changing the nature of the suit property till partition.

Bhajan Singh filed an application for passing a final decree, which has been allowed by the learned Civil Judge (Sr. Division), Rupnagar vide impugned judgment and decree dated 31.01.2017. Local Commissioner was appointed vide order dated 09.08.2016. His report was submitted to which objections were filed by the appellants. Final decree was passed as per the report of the local commissioner while rejecting the objections filed by the present appellants.

Appeal preferred by the appellants was dismissed by the learned Additional District Judge, Rupnagar, vide impugned judgment and decree dated 23.03.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-defendants.

Learned counsel for the appellants argues that respondent no.1 can at best be entitled to 2.5 Marlas from the share of Ram Chand son of Aasa Ram and not Ram Murti. It is argued that in respect to land, Bhajan Singh is entitled to 5 Marlas of land in equal shares from Ram Chand and Ram Murti. It is submitted that objections filed by the appellants have been wrongly rejected. It is thus prayed that the present appeal be allowed and the application for final decree filed by respondent no.1 be dismissed throughout.

I have heard learned counsel for the appellants and have gone through the file including the preliminary judgment and decree dated 14.01.2010.

It is candidly admitted that even joint property held by Ram Chand and Ram Murti was never subjected to partition. It is rightly held by the learned Courts below that the partition as recommended by the Local Commissioner is correct. Learned Additional District Judge, Ropar, while dealing with the arguments raised by the appellants has observed as under:-

“Firstly, it has been contended that common passage has been left from the land of appellants, whereas as per report of Local Commissioner it is only the portion measuring 17.40 square yards belonging to appellants, which has been left for common passage, whereas from the respondent side the land measuring 36.40 square yards has been deducted for the purpose of

common passage. Hence, it is rightly observed by Ld. Lower Court that said objection is not supported by facts on record. So far as the area of the land is concerned, the Local Commissioner has submitted the reasons while giving description of the property and while giving mode of partition. The amount of Rs.98,461/- has been assessed to be paid to the respondent because the Local Commissioner has got the total value assessed regarding the area of property which comes to the tune of Rs.7,63,590/- instead of Rs.6,65,129/- and excess amount of Rs.98,461/- has been ordered to be paid by the appellants, in equal shares. The Local Commissioner has clearly mentioned under the Head of 'Mode of Partition' that respondent is entitled for 45/72 share which he has purchased from Ram Chand and Ram Murti from Khasra No.48//27/2(0-8) along-with his 1/7th share out of 3 Marlas of constructed portion and Shop No.2 existing in the said property. The appellants have not been able to point out that how the said final decree of partition is arbitrary in any manner. It is admitted that appellants has not filed any appeal against the preliminary decree on which basis the present final decree has been passed. The appellants have not been able to give any cogent and convincing reasons how the findings given by Ld. Lower Court on the relevant issues are not sustainable in the eyes of law, when these findings have been rightly returned in favour of parties after appreciation of oral and documentary evidence produced on record. The appellants have not been able to point out any illegality and any infirmity in the impugned judgment and decree, due to which the judgment and decree do not call any interference of this Court and appeal filed by the appellants being without merit is liable to be dismissed. However, the appellants are at liberty to file the suit for recovery of arrears or to avail the remedy for eviction because the respondents are liable to pay the rent if proved to have used the land for the purpose of plinth.”

Learned counsel for the appellant-defendants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 31.01.2017 and 23.03.2018 passed by the learned Civil Judge (Jr. Division) Rupnagar and learned Additional District Judge, Rupnagar, respectively, are upheld.

There is a delay of 05 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

22.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.