

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

RSA-668-2021 (O&M)

Date of decision : 13.07.2022

Sadhu Singh

...Appellant

Vs.

Gurdev Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vijay Lath, Advocate for the appellant.
Mr. Amandeep Singh Saini, Advocate for the respondents.

MANOJ BAJAJ, J.

Sadhu Singh (appellant) has filed this regular second appeal to challenge the judgment and decree dated 26.02.2020 passed in Civil Appeal No.179 dated 16.05.2018, whereby it has affirmed the judgment and final decree dated 22.03.2018 passed by Civil Judge (Junior Division) Rupnagar, upon an application for final decree moved by Gurdev Singh, pursuant to the preliminary decree dated 10.06.2003.

The facts, in brief leading to the appeal are that initially Gurdev Singh (respondent No.1) brought a civil suit bearing No.RT 91/27.11-2000 dated 29.08.2002 for partition of the property comprised in khewat khatauni No.134/189, khasra No.31 (0-8) gair mumkin makan and khasra No.36 (2-15) gair mumkin makan, total (3-15) situated at Village Khairabad and claimed 1/6th share from the defendant, who also prayed for his separate possession.

The suit was contested by defendant-Santokh Singh alone as the remaining defendants, namely, Kahla Singh and Jit Singh were

proceeded against *ex parte* as they did not appear despite service. After considering the pleadings and evidence on record, preliminary decree was passed on 10.06.2003 and the shares of the parties were determined, thereby holding that the plaintiff-Gurdev Singh/defendant No.1 and Santokh Singh are entitled to 1/6th share each, whereas defendant Nos.2 and 3 were held entitled to 1/3rd share each in the suit property. Further, the defendants were also restrained from raising any construction over the suit property. Thereafter, Gurdev Singh filed an application bearing No.35 dated 22.03.2018 for passing of final partition decree and for putting him in possession of his 1/6th share, whereupon Naib Tehsildar, Rupnagar was appointed as Local Commissioner vide order dated 09.03.2018, who submitted his report narrating total land involved as well as excess area occupied by defendants-Kahla Singh, Harinder Singh-Sadhu Singh and Jasvir Singh-Bhajan Singh. Further, it was also mentioned that applicant-Gurdev Singh and defendant No.1-Santokh Singh are in possession of lesser area. The said report was accompanied with site map along with the details. The appellant had filed objections against the said report by Local Commissioner, however, considering the material on record, Civil Judge (Junior Division) Rupnagar vide its judgment dated 22.03.2018 finally affirmed the shares of the parties and final decree was also drawn.

Aggrieved against the said judgment and final decree dated

22.03.2018 passed by Civil Judge (Junior Division), Rupnagar, the

plaintiffs preferred appeal bearing No.179/16.05.2018, however, the same was also dismissed through impugned judgment and decree dated 26.02.2020. Hence, this regular second appeal.

Learned counsel for the appellant has argued that once the shares of the parties were determined vide judgment and decree dated 10.06.2003, therefore, the final decree could not have exceeded the said share. He submits that the land in questions is comprised in khasra Nos. 31 (measuring 8 marlas), 36 (2 kanals and 15 marlas), but the report of the Local Commissioner does not contain these khasra numbers and because of this uncertainty regarding identification of the land, the final decree could not have been passed. According to him, as per report, the appellant and defendant No.1-Santokh Singh were described to be in possession of excess land, but it has not been ascertained that to whom the said land belongs. He further submits that after partition, the khasras are to be given new numbers and that exercise has not been done, therefore, the impugned judgment and final decree passed by both the Courts are erroneous. He prays for setting aside the impugned final decree.

After hearing learned counsel and examining the case file, this Court finds that the declaration of shares of the parties to the appeal through the preliminary decree dated 10.06.2003 are not in dispute. Further, as per the report of the Local Commissioner, which is on record as Annexure A-2, it is evident that all the parties were present, when the site was visited on 09.01.2018 and none of the share-holders

objected that the inspection is being done at some other land, which is not comprised khasra Nos.31 and 36. Merely because, these numbers are not mentioned in the site plan appended with the report, it cannot be taken as material circumstance to doubt the demarcation. It needs to be noticed here that as per the report, appellant-Sadhu Singh along with Harinder Singh is stated to be having excessive possession of 204 square feet area beyond their share, and similarly defendant No.2-Kahla Singh was possessing excessive area of 1967.48 square feet, and Jasvir Singh along with Bhajan Singh was found in excessive area measuring 2083 square feet. On the other hand, the land in possession of Gurdev Singh (respondent No.1) and Santokh Singh was lesser than the determined shares by 394 square feet and 617 square feet, respectively, but no grievance was raised by other similarly situated co-sharers.

Further, while examining the argument of learned counsel conversely that excess land belonged to some third party is also not acceptable, because neither any third party has raised objections regarding demarcation, much less regarding the excess area reported by the Local Commissioner found to be in possession of appellant and few other co-sharers nor any material was brought on record by the appellant to substantiate his stand. Once the shares of the parties to the partition were declared through preliminary decree dated 10.06.2003 and the same have been accepted by co-sharers as correct, and further in the absence of specific objection that shares so determined are not capable of implementation, there does not appear to be any reason to

dis-believe the report of Local Commissioner.

The last argument by Mr. Lath, learned counsel that after partition, khasras were to be given new numbers appears to be misplaced as said exercise is to be done by revenue authorities after the actual partition in terms of the impugned judgment and final decree takes place.

No other argument was raised by learned counsel for the appellant.

Thus, this Court is of the opinion that the impugned judgment and final decree passed by Civil Judge (Junior Division) Rupnagar and upheld by the First Appellate Court are based upon correct appreciation of the material and evidence on record and appeal does not involve any substantial question of law.

Resultantly, the appeal fails and is dismissed.

(MANOJ BAJAJ)
JUDGE

13.07.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No