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

**CR-4813-2018 (O&M)
Reserved on : 05.08.2022
Date of decision : 10.08.2022**

Rajbir and Others

....Petitioners

Versus

Hawa Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pardeep S. Poonia, Advocate for the petitioners.

Mr. J.S. Dahiya, Advocate for the respondents.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 31.05.2018 (Annexure P-5) whereby the objections filed by the plaintiff-petitioners against the report of the Local Commissioner have been rejected.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners and the defendant-respondents are descendants of a common ancestor Netu who had three sons, namely, Sardara, Kidara and Preetu. Since they were in joint possession of the property, therefore, the suit for possession through partition was filed by the plaintiff-petitioners and a preliminary decree came to be passed on 29.04.2010. The defendant-respondents preferred an appeal against the judgment and decree dated 29.04.2010 which was dismissed vide judgment and decree dated 29.01.2011. The plaintiff-petitioners thereafter moved an application for

passing of the final decree. The defendant-respondents did not appear in the proceedings and were initially proceeded against *ex parte*. Thereafter, on applications filed by the defendant-respondents, they were allowed to join the proceedings. The Trial Court appointed the Naib Sadar Kanungo as Local Commissioner for partition of the property. The case set up by the plaintiff-petitioners is that the Local Commissioner though allegedly issued notices to the plaintiff-petitioners and the defendant-respondents, however, actually no notice was served on the plaintiff-petitioners. The Local Commissioner is alleged to have visited the spot on 24.09.2017 for demarcation of the property but according to the plaintiff-petitioners neither the notice was ever served upon them nor the Local Commissioner ever visited the spot for demarcation. The Local Commissioner is stated to have submitted his report dated 24.09.2017 along with maps with the mode of partition along with an attendance sheet. The attendance sheet showed the presence of Dilbag (petitioner No.2 herein), however, it has been stated that he had refused to append his signatures on the same. Aggrieved by the report which was allegedly prepared in their absence, the plaintiff-petitioners filed objections which objections have been dismissed by the impugned order.

Learned counsel for the plaintiff-petitioners would contend that it does not stand to reason as to why a litigant, who had approached the Court for partition and had been litigating, would not appear at the time of the demarcation. It is further the contention of learned counsel that the area as shown in the report of the Local Commissioner is at variance from the map attached with the report.

Per contra, learned counsel for the defendant-respondents has

contended that the plaintiff-petitioners were duly served and that the report has been prepared by the Local Commissioner after visiting the spot. Learned counsel for the defendant-respondents has further contended that the plaintiff-petitioners have got more than their share of the property and are deliberately delaying the proceedings on one pretext or the other.

Heard.

In the present case the plaintiff-petitioners had approached the Court by filing a suit for partition in which a preliminary decree dated 29.04.2010 was passed. The appeal preferred by the defendant-respondents was dismissed vide judgment and decree dated 29.01.2011. The plaintiff-petitioners filed an application for passing of the final decree and the defendant-respondents did not appear and were proceeded against *ex parte*. The attendance sheet attached by the Local Commissioner with his report reveals that none of the plaintiff-petitioners, barring one, is shown to have been present at the time of preparation of the proposed mode of partition. Only one of the petitioners namely, Dilbag (petitioner No.2 herein) is shown to have been present, however, it is noted that he refused to append his signatures. It does not stand to reason as to why a litigant who has been litigating for his rights would not appear before the Local Commissioner at the time of preparation of the proposed mode of partition. Therefore, in order to do complete justice between the parties, the impugned order dated 31.05.2018 (Annexure P-5) is set aside. Let the Local Commissioner submit a fresh report regarding the proposed mode of partition. The Local Commissioner shall give due notice to all concerned and shall visit the spot and prepare the report after marking the presence.

Parties to appear before the Trial Court on 05.09.2022 on which

date the Trial Court shall fix the schedule for further proceedings by the Local Commissioner.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

10.08.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO