

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

RSA No.643 of 2020 (O&M)
Date of decision: 18th July, 2022

Jito Devi (deceased) th. LRs & others

... Appellants

Versus

Sohan Lal & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Monika Tanwar, Advocate for the appellants.

MANJARI NEHRU KAUL, J.

Defendants are in appeal against the judgment and decree of the learned first appellate Court dated 01.02.2020, wherein the final decree of the learned trial Court dated 07.08.2018 in a suit for partition was upheld. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

Baso Ram and Hari Chand sons of Ruttal Mal were co-sharers in equal proportion of the land measuring 1 Bigha 1 Biswa (totalling to 21 Biswas) comprised in Khasra No.695/3 and 696/1 Khewat No.194 Khatauni No.230, situated within the village Tejli as per jamabandi for the year 1957-58 (hereinafter referred to as, 'the suit property'). The plaintiffs, who are successors of Baso Ram son of Ruttal Mal instituted a suit for separate possession by way of partition of the suit property. Defendants No.1 to 8, on the other hand, are successors of Hari Chand son of Ruttal Mal. Out of the share of Hari Chand, some specific portion of land already stands sold wherein subsequent purchasers have

raised construction, to which the parties to the suit did not raise any objection and their possession also is not sought to be disturbed.

Learned Civil Judge (Junior Division), Jagadhri passed preliminary decree dated 18.12.2009 to the effect that the plaintiffs were entitled for separate possession. Defendants No.1 to 8 preferred an appeal against the preliminary decree, which was dismissed by the first appellate Court on 31.12.2014. Thereafter, defendants No.1 to 8 challenged the order of dismissal of the first appellate Court before this Court in Regular Second Appeal (RSA), which also met the same fate and eventually the RSA was dismissed on 23.11.2016.

In the meantime, after dismissal of the first appeal of defendants No.1 to 8 by the learned lower appellate Court, an application under Order XX Rule 18 (2) CPC was filed by the plaintiffs before the trial Court on 04.02.2015 seeking therein the delivery of possession after separation of their shares. During the pendency of this application, vide order dated 16.07.2016 the learned trial Court appointed a Local Commissioner (Naib Tehsildar) with the direction to suggest the mode of partition of the suit property. After the receipt of report of the Local Commissioner on 04.02.2017, the defendants filed their objections.

The trial Court dismissed the objections of the defendants on 07.08.2018 as it did not find any force in them. Consequently, the application which had been filed under Order XX Rule 18(2) of the CPC by the plaintiffs was allowed and final decree for separate possession by way of partition was passed in terms of preliminary decree dated 18.12.2009, thereby separating the suit property among the co-sharers by

metes and bounds as per the mode suggested by the Local Commissioner. The mode of partition and the site plan so prepared by the Local Commissioner was ordered to form part of the decree sheet.

Aggrieved by the order dated 07.08.2018, defendants No.1 to 8 preferred an appeal against the final decree. Finding no illegality, irregularity or infirmity in the judgment and decree dated 07.08.2018 passed by the learned trial Court, the said appeal was dismissed by the lower appellate Court vide judgment and decree dated 01.02.2020.

It is in the above mentioned background that defendants No.1 to 8 are now before this Court in Regular Second Appeal.

Learned counsel for the appellants has vehemently argued that the Courts below have failed to appreciate that the plaintiffs were seeking partition of the property bearing MC Unit No.C-6/299, however, no such property number is in existence and hence, no property as claimed in the suit, is available for partition. Learned counsel has further contended that the preliminary decree pertains to land measuring 1 Bigha 1 Biswa (total 21 Biswas), however, as per the report of the Local Commissioner the property available for partition is 20 Biswa 7 Sarsai only and hence, report of the Local Commissioner can not be relied and acted upon.

I have heard learned counsel for the appellants and perused the relevant material on record.

This Court does not find any merit in the contention of the learned counsel. The appellant/defendants never claimed that they were not the co-sharers along with the plaintiffs in the suit property described

in the plaint. The rights of the parties qua the suit property already stands declared in the preliminary decree. Scope of proceedings under Order XX Rule 18 (2) CPC is just confined to work out and finalize the rights and interests as declared by the preliminary decree. In the instant case, the preliminary decree mentions description of the suit property as land measuring 1 Bigha 1 Biswa comprised in Khasra No.695/3 and 696/1, Khewat No.194, Khatauni No.230 situated within the revenue estate of village Mauja Tejli, then HB No.208, now recorded as 408, Tehsil Jagadhri, District Yamuna Nagar, Unit No.C-6/299 and shown by letters 'ABCD' in the annexed site plan. It is not the case of the defendants that the suit property depicted in the report of the Local Commissioner is not available on the spot for partition between the parties and is located elsewhere. Both the Courts below have also clarified that at the time of passing of the preliminary decree, inclusion of the suit property in the *Abadi* and the change in Khasra numbers had already been dealt with. This Court, in the circumstances, does not find any illegality or perversity in the findings recorded by the courts below.

This Court does not find any merit in the contention of the learned counsel for the appellants that report of the Local Commissioner cannot be relied upon. Preliminary decree in a partition suit cannot be made redundant merely because at the time of demarcation on the spot, the area available for partition is found to be slightly less than the one mentioned in the preliminary decree. It is certainly not the case of the defendants that the land measuring 1 Bigha 1 Biswa is in the actual physical possession of the parties to the suit and is available on the spot

for partition. It may also be noticed that in the mode of partition suggested by the Local Commissioner, the proportion of share between the parties to the suit has not been disturbed. Separate possession out of the total 20 Biswa 7 Sarsai area available for partition is proposed to be delivered to the plaintiffs and defendants in proportion to their respective shares in the suit property.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. In view thereof, the impugned judgments and decrees are hereby affirmed and the instant appeal being without any merit is accordingly dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 18, 2022

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No