

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.115

CR-4348-2022

Date of Decision: 14.10.2022

Mala Ram and others

.... Petitioners

Versus

Dharampal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Mani Ram Verma, Advocate and
Mr. Nipun Verma, Advocate
for the petitioners.

TRIBHUVAN DAHIYA, J. (ORAL)

This revision petition has been filed under Article 227 of the Constitution of India against orders of the Executing Court dated 16.09.2022 (Annexures P-10 and P-11), and the subsequent orders dated 24.05.2018 and 01.10.2022 (P-12) on the basis of which aforesaid two orders are stated to have been passed.

2. The facts of the case in brief are, on the suit filed by respondent No.1/plaintiff, preliminary decree was passed by the trial Court on 27.07.2015 for partitioning the suit land. The appeal filed against this preliminary decree was dismissed on 13.11.2019. Meanwhile, the final decree of partition was passed on 24.05.2018; ordering to partition the suit land as per site plan and report submitted by the Local Commissioner which were to be made part of the final decree. Subsequently, an application for execution of the decree was filed, in which dispute arose between the

parties, and the Local Commissioner was appointed by the Executing Court to demarcate the suit land afresh for suggesting the mode of partition. The Local Commissioner, Bhale Ram Kanungo, appeared before the Court on 22.08.2019 and made a statement that total land in question was 30 *kanals*, out of which land measuring 3753 square yards was for passage, and deficiency of the land measuring 551 square yards could be completed by including the land of internal walls. In these circumstances, the Local Commissioner was directed by the Executing Court to visit the spot and prepare the final draft of partition. On 07.09.2019, he prepared the report suggesting the mode of partition and submitted it to the Court. Thereupon, warrant of possession was issued.

4. It is pertinent to note that the application filed by judgment debtors for fresh demarcation of the suit land, on account of discrepancies in the Local Commissioner's reports, was dismissed by the Executing Court on 09.12.2019. Again, warrant of possession was issued, which could not be executed for want of police help.

5. Learned counsel for the petitioner/judgment debtors submits that on account of discrepancies between the reports submitted by Local Commissioner dated 07.09.2019 and the earlier report dated 09.12.2017, he approached the Assistant Collector, Grade-II, Siwani; who, vide order dated 06.01.2020, directed demarcation of the suit land. As per this demarcation report, dated 20.01.2020, area of 4 *kanals* 6 *marlas* was found less on the site, and it was recommended to get it corrected under consolidation proceedings. On the basis of this demarcation report, the petitioner/judgment debtors again approached the Executing Court by filing the instant application dated 21.01.2020 for setting aside the final decree dated

24.05.2018. It has been contended that in view of the apparent discrepancies in the two reports submitted by Local Commissioner, the final decree becomes inexecutable and, therefore, a fresh demarcation is needed for partitioning the suit land by setting aside the final decree.

7. The argument raised by learned counsel deserve to be rejected. From perusal of the paper book, it is apparent that the earlier application for demarcation of land and setting aside the order dated 07.09.2019 filed by the petitioner/judgment debtors, which was dismissed by the Executing Court by order dated 09.12.2019, was never challenged and it attained finality. The said order is not under challenge even in the instant revision petition. Therefore, the petitioner cannot be permitted to raise the same issue again which stands finally settled. Further, any report got prepared by the petitioner/judgment debtors on their own from the revenue authorities cannot be a ground to challenge the final decree passed by the trial Court. Still further, counsel for the judgment debtors himself made a statement before the Executing Court on 22.08.2019 (refer Annexure P-5) that by keeping the possession intact, the suit land can be partitioned. It was only thereafter that the Local Commissioner was directed to visit the spot and prepare the final draft of partition, which was submitted by him on 07.09.2019. A perusal of the impugned order dated 16.09.2022 (Annexure P-11) also shows that on the basis of the Local Commissioner's report dated 07.09.2019, warrant of possession was issued for 01.10.2022 and police help was provided. It is further recorded in the order dated 01.10.2022 (P-12) that possession of a part of the suit land has duly been handed over to the decree holders by the Kanungo, who made a statement to that effect before the Court.

8. In view of the aforesaid, there is no ground to entertain the instant revision petition and the same is, accordingly, dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

14.10.2022
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No