

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.134 of 2020 (O&M)
Date of Decision : 20.03.2023**

Jito Devi (since deceased) through her LRs

....Petitioners

VERSUS

Sohan Lal and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Krishan Singh, Advocate for the petitioners.

Mr. Abhishek Singh, Advocate for respondent Nos.1 to 6.

None for respondent Nos.7 to 10.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 28.11.2019 passed by the Executing Court in petition bearing No.EXE/321/2018 titled 'Sohan Lal vs. Jito Devi etc.' whereby the objections filed by the petitioners had been dismissed. Aggrieved by the same, the present revision petition has been filed.

Learned counsel for the petitioners would contend that the report of the Local Commissioner has been prepared in connivance with the respondents and that the Local Commissioner was directed to demarcate the suit land and to bring the actual position before the Court. However, the Naib Tehsildar, who was appointed as Local Commissioner, prepared the mode of partition.

Per contra learned counsel for respondent Nos.1 to 6 would contend that in the present case a preliminary decree dated 18.12.2009 was passed holding the plaintiff-respondents entitled for separate possession. The

defendant-petitioners herein preferred an appeal against the preliminary decree which was dismissed by the First Appellate Court on 31.12.2014. Thereafter, the same was challenged before this Court by filing RSA No.1199 of 2015 which was also dismissed vide order dated 23.11.2016. The plaintiff-respondents herein filed an application for passing of the final decree. During the pendency of the said application, on 16.07.2016 a Local Commissioner (Naib Tehsildar) was appointed with a 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 defendant-petitioners herein filed their objections, which were dismissed vide order dated 07.08.2018 and the final decree for separate possession by way of partition was passed in terms of the preliminary decree dated 18.12.2009. Aggrieved by the order of the Trial Court dated 07.08.2018 dismissing the objections and passing of the final decree, an appeal was preferred by the defendant-petitioners herein against the final decree. The said appeal was dismissed vide judgment and decree dated 01.02.2020. Aggrieved by the same, RSA No.643 of 2020 was preferred which was also dismissed by a detailed speaking order dated 18.07.2022. A Co-ordinate Bench of this Court while dismissing RSA No.643 of 2020 held as under :

“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.”

In the execution petition the same very objections have been sought to be raised. The appeal against the final decree having been dismissed by this Court, the rights of the parties stood crystalized and the objections filed by the defendant-petitioners herein to the report of the Local Commissioner stood rejected. The defendant-petitioners cannot now be

allowed to re-agitate the entire case before the Executing Court on the same grounds.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Executing Court. The present revision petition, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.03.2023
jk

(ALKA SARIN)
JUDGE

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