

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CR-375-2023 (O&M)
Reserved on: 03.05.2023
Date of pronouncement: 09.05.2023

Rakesh Kumar ...Petitioner

Versus

Suresh Kumar ...Respondent

(2) CR-340-2023 (O&M)

Rakesh Kumar ...Petitioner

Versus

Suresh Kumar ...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate for the petitioner.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate and
Ms. Rabani Attri, Advocate for the respondent.

H.S. MADAAN, J.

By this judgment, I intend to dispose of above mentioned revision petitions having almost identical facts.

2. Briefly stated facts of the case are that petitioner Rakesh Kumar and his brother Suresh Kumar respondent are co-owners of two parcels of land, first measuring 65-K-3M, second having an area of

37K-13M adjoining to each other situated at Village Sidhrawali, Tehsil Manesar, District Gurugram; petitioner Rakesh Kumar had filed two suits seeking partition of the said parcels of land; civil suit bearing No.85 of 2017 with respect to 65K-3M and civil suit No.86 of 2017 regarding 37K-13M.

3. On getting notice, defendant Suresh Kumar had appeared and filed written statement cum counter claim contending that all the joint property should be included in the same suit and the plaintiff had intentionally filed two separate suits regarding the joint property, in that way, suit is bad for partly partition. The defendant contended that besides the suit property of the main suit, the land measuring 37K-13M was also joint property of the parties to the suit where a petrol pump, service station and weighment bridge (dharamkanta) are installed in the land comprised in rectangle No.5, killa No.22/2/2/2, 21/3/2/2/2 and rectangle No.14, killa No.2. The land comprised in rectangle No.5, killa No.18/2/2/1, rectangle No.14, killa No.3 is lying vacant. An old go-down is there in rectangle No.5 killa No.23 whereas a double storied house is constructed in rectangle No.5, killa No.23 and some portion of the said killa is lying vacant. The land comprised in rectangle No.5, killa No.15/1, 16/2, 17/1, 24 and 25/1 is lying vacant, though CLU with regard to the same has been obtained and a go-down has already been constructed in the area having rectangle No.14 killa No.4, 5/1, 6/2, 7 and 14. The construction of go-down was raised by obtaining loan from the bank by mortgaging the suit land. The

construction is not yet complete. The plaintiff had authorized the defendant to operate the loan account and loan amount has been paid by the defendant. He has invested maximum amount in obtaining CLU, paying requisite fee etc. The plaintiff did not pay his half share in outstanding dues, therefore, the defendant has filed a suit for recovery against him. In para No.9 of the written statement, the defendant had suggested the mode of partition of joint property. In the counter claim filed by him, the defendant had sought partition of the entire joint land.

4. The plaintiff filed replication to the counter claim admitting that another chunk of land is also there which is a joint property of the parties. He denied that the defendant has been running petrol pump, service station and weighment bridge. The plaintiff stated that the mode of partition suggested by the defendant is not acceptable to him.

5. From the pleadings of the parties, following issues were framed on 06.08.2018:-

1. Whether the plaintiff is entitled for a decree of possession by way of partition as prayed for? OPP.
2. Whether the plaintiff has concealed material facts and approached the court with uncleaned hands?
OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Whether the defendant is entitled to the relief of counterclaim as prayed for ? OPD
5. Relief.

6. Similarly in the other suit with regard to partition of land measuring 37K-13M filed by plaintiff Suresh Kumar against Rakesh Kumar bearing No.85 of 2017, on getting notice, defendant Rakesh Kumar had appeared and filed written statement cum counter claim almost on the same lines as in the other suit bearing No.86 of 2017. Issues in that suit were also framed. However, both the suits were consolidated and after completion of trial were disposed of, vide a single judgment passed by Civil Judge (Jr. Divn.) Gurugram on 03.01.2020. The relief granted contained in para No.19 of the judgment was to the following effect:-

“In view of my findings on issues No.1 and 2 of the main suit and connected suit, both the suits and counterclaim are decreed with no order as to costs. A preliminary decree for partition by metes and bounds is passed declaring the plaintiff and defendant entitled to $\frac{1}{2}$ share each in the entire joint property [i.e. suit property of main suit and suit property of connected suit]. Parties are left to bear their own costs. Preliminary Decree sheet be prepared. A copy of this judgment be kept in the file of connected suit. File complete in all respect be consigned to the record room after due compliance.”

7. None of the parties preferred any appeal against judgment and decree, as such, those have become final and binding between the parties. Thereafter, the plaintiff had filed two applications seeking passing of final decree. In one application, he had included one parcel of land measuring 65K-3M whereas in the other application, he had

sought passing of final decree with regard to the other parcel of land measuring 37K-13M. The defendant on the basis of decree passed in the counter claims had also filed two applications for passing of final decree. Thereafter, the defendant moved a petition for consolidation of all the applications under Section 151 CPC. That application was resisted by Suresh Kumar plaintiff in the two suits. The application was dismissed by the Court of Civil Judge (Jr. Divn.) Gurugram, vide impugned order dated 08.12.2022. For ready reference, the operative part of the order is reproduced as under:-

“3. After thorough consideration and arguments put forth by the learned counsel for both the parties and have gone through the case file carefully, it transpires that the applicant/defendant wants to consolidate all the four applications bearing CM No.56 of 2020 CNR No.HRGR-02-001789-2020, CM no.57 of 2021 CNR No.HRGR02-001790 of 2021 and CM No.93 of 2020 CNR No.HRGR02-000988 of 2020 in any one of the application filed by applicant/defendant. From the perusal of the case file and documents placed on record, it transpires that both suits tiled as Suresh Kumar Vs. Rakesh bearing Civil Suit No.85 of 2017 CIS No.CS/1020 of 2017 and another Rakesh Kumar Vs. Rakesh bearing Civil Suit No.86 of 2017 CIS No.CS/1021 of 2017 were consolidated vide order dated 10.05.2018. Thereafter, both suits and counter-claims were decreed with order as to costs vide judgment dated 03.01.2020 passed by the court of Ms. Sumitra Kadian, the then learned Civil Judge (Junior Division), Gurugram and a preliminary decree for partition by metes and bounds was passed declaring the plaintiff and defendant entitled to $\frac{1}{2}$ share each in the entire joint property (i.e. suit property of

main suit and suit property of connected suit).

4. The bare perusal of the aforesaid cases reveals that the applications for passing of final decree are in respect of separate parcels of land which is covered under decree sheet. It is further, the case of the respondent/plaintiff that upon the different parcel of land various apertures and structures are in existence at the different locations. The respondent Rakesh Kumar has also installed and is running petrol pump on the major part and parcel of land measuring 37 Kanal 13 marla since 2005 along-with a residential house, old godown structure and some open agricultural land is also existing upon the same. Further, the properties which are to be partitioned also contains green belt area and in case, the entire land is taken as a whole for the purpose of getting the properties partitioned by way of metes and bounds, then it may so happen that major portion of green belt area could fall within the possession of any one party to the decree, to his detriment. Even otherwise, for the sake of convenience and effective distribution of the respective shares of parties over the suit property partitioning separate parcels of land would subserve the interest of both the parties as the property would be equitably distributed amongst to the parties.

5. As such, in order to give effect to the judgment and decree dated 03.01.2020 and for getting the land equally partitioned between the parties, this court is of the view that since separate parcel of land are the subject matter of the present execution petitions, they are required to be dealt with differently and cannot be consolidated. Although, ld. counsel on behalf of applicant has raised the contention that in order to avoid conflicting the final decrees, the four applications could be consolidated since all the four execution petitions are pending in the same Court, therefore,

this Court is of the view that question of conflicting final decrees would not arise. In view of aforesaid discussion, there arises no necessity for consolidating all the application in any one of the application and thus, taking into account the facts and circumstances of the case, the application in hand is hereby dismissed.”

8. Feeling aggrieved by such order, defendant Rakesh Kumar has approached this Court by way of filing the present revision petitions, praying that the same be accepted; the order under revision be set aside and petition filed by him for consolidation of all the applications be accepted. Respondent/plaintiff had filed a caveat through counsel who has put in appearance on his behalf.

9. I have heard learned counsel for the parties besides going through the record.

10. As has been mentioned above, both the brothers namely Suresh Kumar and Rakesh Kumar are co-sharers in two parcels of land. Those parcels are having superstructures also. The parcels of land adjoin each other and there is no other co-sharers in the said parcels except two brothers. Why the plaintiff chose to file two separate suits for partition is difficult to understand because a suit filed with regard to the partition of one parcels of land would be taken to be bad for partly partition and objection in that regard was raised on behalf of the defendant, who had filed counter claims seeking partial of the entire joint land/property between the two brothers. Thereafter, both the suits were consolidated, as such, defendant did not press his objection for

rejection of the plaint for the reason of bar of partial partition. The two suits with regard to parcels of land having been consolidated, in which the defendant had filed written statement cum counter claims that the entire joint property be taken up for partition. Not only the two suits along with counter claims were tried together but decided, vide a single judgment. The suits were decreed and counter claims were also allowed. That means the plea of the defendant that the entire property be partitioned was accepted. It being so, the plaintiff ought to have filed one application seeking passing of final decree. However, he had filed two applications. The defendant had also filed two applications for execution of counter claims. Thereafter, the defendant moved a petition for consolidation of all the applications. The trial Court ought to have accepted that petition, keeping in view the totality of circumstances because when final decree is to be passed and partition is to be done by metes and bounds, then there would be wide scope for making adjustments while allotting separate chunks to the co-sharers which would be their absolute ownership. The trial Court perhaps did not understand the factual and legal position properly and rejected the petition.

11. Learned senior counsel arguing for the respondent has laid much stress on the point that two suits had been filed, though consolidated and two decrees had been passed, therefore, two applications for passing of final decree were rightly moved by the plaintiff and the impugned order passed by the trial Court is legal and

valid and it does not call for any interference.

I do not find this contention put-forward by learned senior counsel for the respondent to be worthy of acceptance. The counter claims being also decreed with regard to the partition of the entire property i.e. both the parcels and decree passed in the suits be also to that effect, the plaintiff cannot insist that two parcels of land/property be partitioned independently, rather the partition of the two is to be taken up together and it certainly not a case of intermingling as is being projected on behalf of the plaintiff in the main suits.

12. The orders under revision cannot stand judicial scrutiny. The same are accordingly set aside and the Court below is directed to take up all the applications for passing of final decree together and not independently and then to proceed further in the matter in accordance with law. Parties through counsel are directed to appear before the trial Court on 30.05.2023.

The revision petitions stand allowed accordingly.

09.05.2023
sumit.k

(H.S. MADAAN)
JUDGE

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