

Sanjiv Kumar & Anr.

... Petitioner(s)

Versus

Ravi Kant & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arun Singla, Advocate for the petitioner.

Mr. Surinder Garg, Advocate for respondent Nos.2(a) to 2(c).

ALKA SARIN, J. (ORAL)

The challenge in the present revision petition is to the order dated 28.05.2018 (Annexure P-12) passed by the Trial Court vide which a Local Commissioner has been appointed to visit the spot and suggest three modes of partition of the suit property by metes and bounds and to report regarding the actual and factual position at the spot. The Local Commissioner is to give notice to all the parties concerned.

Learned counsel for the petitioners would contend that the description given in the preliminary decree and the application for passing of the final decree is different. Learned counsel would further contend that the report of the Local Commissioner was already prepared on 11.11.2014 which states that the description of the property given in the preliminary decree is different from the site plan given in the application for passing of the final decree.

Learned counsel for respondent Nos.2(a) to 2(c) has contended that against the order dated 21.05.2015 vide which the final decree was

passed, an appeal was preferred and in the appeal the matter has been

remanded on the ground that the Local Commissioner neither suggested three modes of partition nor the final decree was passed in terms of the preliminary decree. After remand, the Trial Court has passed the impugned order dated 28.05.2018 vide which the directions have been issued for appointment of a fresh Local Commissioner. It is further the contention that the Local Commissioner would give his report in consonance with the order dated 17.03.2017 passed by the First Appellate Court and hence no fault can be found with the impugned order.

Heard.

In the present case, the impugned order has been passed after the remand of the case by the First Appellate Court on 17.03.2017. In consonance with the order passed by the First Appellate Court on 17.03.2017, the Local Commissioner has been directed to suggest three modes of partition for partition of the suit property as well as to give a report regarding the actual and factual position at the spot. The only grouse of the petitioners herein is that the site plan submitted at the time of filing of the application for passing of the final decree does not tally with that of the dimensions given in the preliminary decree. In view thereof, it is made clear that the Local Commissioner shall also prepare a fresh site plan in order to put to rest the controversy.

In view of the above, the present revision petition is accordingly disposed off with the above observations. Pending applications, if any, also stand disposed off.

31.01.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

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