

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

126

CR-5529 of 2023
Date of Decision:09.11.2023

Gulzar Singh and others

....Petitioners

Versus

Gurjeet Singh and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. L.M. Gulati, Advocate and
Ms. Divya Gulati, Advocate
for the petitioners.

Mr. Rajinder Sharma, Advocate
for respondent No.1.

SANJAY VASHISTH, J.(Oral)

1. In the suit filed by Gurjeet Singh-plaintiff (respondent No.1 herein), a preliminary decree for separate possession by way of partition was passed. After passing of the preliminary decree, Local Commissioner, was appointed on the application filed by plaintiff (respondent No.1 herein) and in the said application, impugned order dated 18.08.2023 has been passed by the Court of learned Civil Judge (Junior Division), Ajnala, whereby Local Commissioner (draftsman) has been allowed to explore the mode of partition. Relying upon the provision of Section 54 C.P.C., defendants No. 1 to 4 (petitioners herein) filed present petition and submitted that the appointed Local

Commissioner has to be a Revenue Official and not an ordinary Local Commissioner.

2. After hearing learned counsel for the parties, the following order was passed on 29.09.2023:

“Present: Mr. L.M. Gulati, Advocate for the petitioner(s).

1. While making reference to Section 54 of the Civil Procedure Code, counsel for the petitioners submits that for the purpose of final decree, appointment of Draftsman as Local Commissioner is an error in law, committed by the Court.

Section 54 says as under:-

"54. Partition of estate or separation of share. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate the partition of the estate or the separation of the share of such an estate shall be made by the Court in accordance with the law if any, for the time being in force relating to the partition or the separate possession of shares, and if necessary on the report of a revenue officer, not below the rank of Tehsildar or such other person as the Court may appoint as Commissioner in that behalf."

Thus, counsel for the petitioners submits that the job assigned to the Draftsman as Local Commissioner, in fact, is to be done through the revenue official only.

Notice of motion for 20.10.2023.

Through dasti process as well.

2. Till the next date of hearing, operation of the impugned order dated 18.08.2023, whereby Draftsman has been appointed as Local Commissioner to suggest the mode of partition by preparing a comprehensive site plan accosting to the share of the parties and the value of the property in question has been sought, shall remain stayed.

To be shown in the urgent list.”

3. Mr. Sharma, learned counsel for respondent No.1 (the only contesting respondent) submits that he has all required

instructions with him to say that there is no objection to the respondent in allowing of the prayer made by the petitioners by way of present petition. Thus, broadly speaking respondent No.1 agrees for appointment of Revenue Official as Local Commissioner, for the purpose of preparing the final decree, as already directed by the Court.

4. Taking note of the fact that the contesting respondent himself has consented for the claim of the petitioners (defendants No. 1 to 4), impugned order dated 18.08.2023 is modified to the extent that **Local Commissioner appointed would be some Revenue Official and** for that purpose, learned trial Court may pass a separate order.

However, it is clarified that if any expenses are to be incurred or any amount is chargeable for appointment of the Revenue Official as Local Commissioner, same would be paid in advance by the petitioners (defendants No. 1 to 4) under the direction and knowledge of the Court.

Accordingly, with the recording of the aforementioned terms, the present petition stands disposed of.

November 09, 2023
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no