

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.4370 of 2018 (O&M)

Date of Decision: 31.01.2023

Deepak Kumar @ Nathu

....Appellant

Versus

Hari Singh Deceased through LRs and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.S. Yadav, Advocate
for the appellant.

Mr. Aditya Yadav, Advocate
for the respondents.

Harsimran Singh Sethi, J. (Oral)

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 28.04.2014 by which, the objections filed by appellant-Deepak Kumar regarding mode of partition was dismissed as well as to the order passed by the lower Appellate Court dated 16.03.2018 by which, the judgment of the trial Court dated 28.04.2014 was upheld and appeal filed by the appellant herein was dismissed.

Learned counsel appearing on behalf of the appellant argues that the partition proceedings were finalized between the co-sharers on

the basis of the report of the Local Commissioner but without noticing the fact that the same was not in accordance with law and the same never suggested the mode of partition but was only *Naksha be*.

Learned counsel for the appellant further submits that even all the co-sharers were not impleaded before effecting the partition. Lastly, the argument was raised that the valuable portion of land was partitioned in favour of respondent No.2 as compared to the appellant herein which has also caused prejudice to the appellant.

I have heard the learned counsel for the parties and have gone through the record of the case with their able assistance.

Both the Courts have returned the concurrent findings and have upheld the partition proceedings. The argument which has been raised by learned counsel for the appellant, has been dealt with by the Courts below and findings have been recorded that objection being raised by the appellant does not subsists on merits to be taken into consideration and hence rejected the same.

Learned counsel for the appellant has submitted that the mode of partition was not submitted but only *Naksha be* was submitted which could not have been taken into consideration for effecting the partition. It may be mentioned here that the report of the Local Commissioner is only recommendatory for the Court to be accepted. Once the report of the Local Commissioner has come on record, which was accepted by all the other share holders except the appellant, the same will not give right to raise grievance to the appellant to contest that the report of the Local Commissioner should have been in a particular manner which suits the appellant. Once the partition has already been done and no

other co-sharer has raised any objection, merely that the Local Commissioner submitted his report in a particular form will not give a cause of action to the appellant to contest the said partition proceedings.

With regard to the argument that all the co-sharers were not party to the partition proceedings, it may be noticed that the partition was done as far back as in 2013. No one has approached the competent Court of law raising any objection that they have been prejudiced by the partition proceedings. Once the appellant was party to the proceedings and he has raised all the objections, which have been dealt with by the competent Court of law, it does not lie in the mouth of the appellant to say that the partition proceedings should be set aside without showing any prejudice caused to the appellant even if it is assumed for the sake of arguments that, certain co-sharers were not party to the present proceedings. Once everyone else has accepted the partition proceedings and no prejudice caused has been shown by the appellant, the said argument of the appellant cannot be accepted.

The third argument, which has been raised by learned counsel for the appellant is that the valuable portion of the land has been given to respondent No.2 as compared to the appellant. The said argument has been dealt with by the Courts below and returned the finding that the land given in partition to respondent No.2 is almost in the center of the joint property and same does not abut any main passage. Hence it cannot be said that main portion of the land has been partitioned in favour of respondent No.2 so as to be considered more valuable as compared to the land which has come to the share of the appellant.

Further, learned counsel for the appellant has not been able to

show any findings, which are perverse to the evidence which has come on record.

Keeping in view the above concurrent findings of the Court below, no interference is called for by this Court in the present proceedings. Appeal stands dismissed.

CM No.11561-C of 2181

Keeping in view the above order, application for stay is also dismissed.

January 31, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*