

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-4488-2018(O&M)

Date of decision:-27.1.2023

Soran @ Swaran Singh and another

...Appellants

Versus

Ram Karan and another

...Respondents

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

Present: Mr.Rajesh Bansal, Advocate
for the appellants.

Mr.Hardip Singh, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case as per the version of the appellants are that plaintiff Ram Karan had brought a suit seeking separate possession of 3/8 share in the suit properties; that Civil Suit bearing No.742 of 2003 was decreed on 30.11.2009 and a preliminary decree was passed to the effect that plaintiff Ram Karan and defendant No.3 his brother Nar Singh are having 3/8 share in the joint properties, whereas the remaining 5/8 share was of defendant No.1 Soran @ Swaran Singh and his brother Faquiria – defendant

No.2.

2. Thereafter, defendant No.1 Soran @ Swaran Singh filed an application for passing of final decree. Notice of that application was issued to the respondents. During the course of proceedings, learned Civil Judge (Sr.Divn.), Panchkula directed Field Kanungo, Raipur Rani to prepare a plan regarding the partition of the property; in compliance thereto Field Kanungo, Raipur Rani visited the spot and prepared a plan submitting it in the Court.

3. Plaintiff Ram Karan was however not satisfied with the report and submitted objections dated 16.11.2012 for fresh appointment of Kanungo to partition the land in terms of quality of the land as per the site plan and the judgment. Plaintiff Ram Karan had alleged that defendant Soran @ Swaran Singh had raised construction of a residential house upon Khasra No.4//20/3 measuring 3 kanals 19 marlas, whereas that khasra number had fallen to the share of Faquiria and the house constructed by the plaintiff had fallen to his share. Accordingly, Field Kanungo, Raipur Rani was summoned by the Court and his statement was recorded to the effect that he had not partitioned the abadi area because record thereof was not produced; he sought some time to partition the property after going through the Court file. The objections were withdrawn by the plaintiff. Thereafter, Field Kanungo, Raipur Rani submitted a detailed report dated 21.11.2013 with regard to the partition

including the abadi area. The Court had directed Tehsildar, Panchkula to submit the valuation report, which was accordingly done but it was based upon report by Halqa Patwari, who had visited the spot without giving notice to the parties. In terms of partition report, share of defendant Soran @ Swaran Singh came to 7 kanals 16 marlas besides abadi of 3 marlas; that of Faquiria 7 kanals 15 marlas besides abadi of 3 marlas, as such their total share came to 5/8 share. Whereas share of Ram Karan plaintiff along with his brother Nar Singh came to 9 kanals 9 marlas abadi of 4 marlas together constituting 3/8 share; Tehsildar, Panchkula had assessed valuation of khasra No.4//20/3 measuring 3 kanals 19 marlas and khasra No.4//21/1 measuring 1 kanal 1 marlas as Rs.65,000/- per marla.

The appellants had raised a plea that they had constructed the house and boundary wall in khasra No.4//20/3 and 4//21/1 by putting earth in the land up to 5 ½ feet; the land was berani and it should have been assessed @ less than 10,000/- per marla by the Collector.

4. Appellant Soran Singh had filed objections dated 22.2.2015 on the valuation report dated 21.1.2015 submitted by Tehsildar to the extent that khasra No.4//20/3 and 4//21/1, which was berani in nature should be assessed as such; furthermore out of khasra No.4//20/3 measuring 3 kanals 19 marlas, which has fallen to appellant No.1/defendant No.2. Out of that land 19 marlas has been

taken by PWD(B&R), Haryana for construction of a road long ago without paying any compensation, therefore, the share given to appellant No.1 is less by 19 marlas; that no opportunity was given to appellants to challenge the rejection of objections by them with regard to valuation report dated 21.1.2015.

5. Vide order dated 12.3.2015, the petition for drawing up of the final decree was accepted with no order as to costs. The mode of partition as suggested by the Local Commissioner was made absolute subject to the condition that in lieu of protecting their possession over the prime land by Soran and his brother Faquiria, they would pay a sum of Rs.8,55,343 to Ram Karan and Nar Singh/his legal heirs within two months from the date of that order, failing which they would be at liberty to get it recovered from Soran and Faquiria.

6. Learned Civil Judge (Sr.Divn.), Panchkula observed that since the objection was regarding the value of the property, which had been given to the respective parties as per the mode of partition as suggested by the Local Commissioner, the valuation of the properties as per the Collector Rates from the Tehsildar, Panchkula was called for and report from Tehsildar, Panchkula was received. Soran @ Swaran Singh filed objection to that report also. The Court did not find the objection to be tenable and observed that 19 marlas of the land has been taken by State of Haryana for construction of the

road out of khasra No.4//20/3 measuring 3 kanals 19 marlas and if the value of this land is calculated @Rs.65,000/- per marla and is deducted from the value of the land of khasra no.4//20/3 measuring 3 kanals 19 marlas, the value of 3 kanals land which had fallen to the share of Soran @ Swaran Singh comes out to Rs.39 lakhs. Considering the shares of the parties and carrying out necessary calculations, learned Civil Judge (Sr.Divn.), Panchkula concluded as follows:

16. In view of the aforesaid valuation of the total land measuring 25 kanals (as the remaining land has either been exhausted in constructing road measuring 19 marlas or giving the Rasta to the parties on partition measuring 1 Kanal 4 Marlas) comes to Rs.1,43,91,249/-. If the aforesaid value of the land is divided into eight shares as five shares are of Soran and his brother Faquiria, whereas, three shares are of Ram Karan and Nar Singh, the value of one share comes out at Rs.17,98,906/-. The value of five shares of Soran and Faquiria comes out at Rs.89,83,530/-, whereas, the value of three shares of Ram Karan and his brothers come out at Rs.53,96,718/-.

17. The value of the properties of Ram Karan and Nar Singh as per mode of partition as suggested by the Local Commissioner is Rs.45,39,375/- and as such he is in the loss of Rs.8,55,343/-, which will have to be made good by Soran and

his brother Faquiria at the time of drawing up the final decree and the possession of the parties is liable to be protected by the Court.

18. The houses of the respective parties have been in existence at the respective lands, suggested to be given to them as per mode of partition given by the Local Commissioner. As such, the respective possession of the parties thereon is protected and the mode of partition as suggested by the Local Commissioner is upheld subject to the condition that Soran and Faquiria would pay Rs.8,55,343/- to Ram Karan and Nar Singh/his legal heirs. However, if Soran and his brother fail to pay the said amount to Ram Karan etc. within a period of two months from the date of this order, in that eventuality, Ram Karan would be at liberty to seek the assistance of the Court to get the said amount realised from Soran and another.

19. On the basis of aforesaid discussion, the petition for drawing up of the final decree is accepted with no order as to costs. The mode of partition as suggested by the Local Commissioner is made absolute subject to the condition that in lieu of protecting their possession over the prime land by Soran and his brother Faquiria, they would pay a sum of Rs.8,55,343/- to Ram Karan and Nar Singh/his legal heirs within two months from the date of this order, failing which

they would be at liberty to get it recovered from Soran and Faquiria. Final decree sheet be prepared accordingly. The mode of partition as suggested by the Local Commissioner and the valuation of the land as per the Collector Rate submitted by the Tehsildar, Panchkula before the Court shall form part of the final decree. File be consigned to record room after due compliance and be tagged with the file of Civil Suit No.742 of 2003 titled as “Ram Karan Vs. Faquiria and others”, the preliminary decree passed wherein is sought to be made final by virtue of this petition.

7. Feeling aggrieved defendants No.1 and 2 Soran @ Swaran Singh and Faquiria and plaintiff Ram Karan had filed separate appeals against the judgment and decree dated 12.3.2015 passed by Civil Judge (Sr.Divn.), Panchkula but those appeals were dismissed vide judgment and decree dated 26.9.2017 by Additional District Judge, Panchkula.

8. Still feeling dissatisfied, appellants Soran @ Swaran Singh and Faquiria (defendants No.1 and 2) have approached this Court by way of filing the present regular second appeal, notice of which was issued to respondents and respondent No.1 has put in appearance through counsel.

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

10. Learned counsel for the appellants has contended that without considering all the facts both the Courts have wrongly directed the appellants to pay Rs.8,55,343/- to the respondents within 2 months, whereas respondents are enjoying their share and are in possession of chahi land.

11. In the instant case the parties are not at variance as regards their shares in the joint land and are not disputing the preliminary decree passed by the trial Court on 30.11.2009. The dispute between the parties arose during the proceedings for drawing up of final decree. The trial Court of Civil Judge (Sr.Divn.), Panchkula to resolve the dispute in its wisdom appointed Halqa Patwari, Raipur Rani as Local Commissioner to suggest the mode of partition and he accordingly did so in two parts. The plaintiff/respondent No.1 had filed objections against the mode of partition as suggested by Local Commissioner stating that Local Commissioner did not suggest the mode of partition on the basis of quality of land and the land given to Soran @ Swaran Singh is costlier than the land given to plaintiff Ram Karan; further land comprised in khasra No.4//20/3(3-19) and 21/1(1-1) is adjoining the road and when Faquiria defendant No.1 in civil suit No.742 of 2003 had tried to raise construction over khasra no.21/1, then Ram Karan, objector

had filed a civil suit against Faquiria and Soran @ Swaran Singh where a statement was suffered by Faquiria on behalf of the defendants to the effect that the share of Ram Karan and Nar Singh would be given to them out of those two khasra numbers at the time of effecting the partition of the joint holdings. Furthermore, in civil suit in question the Court had passed an order that if Soran @ Swaran Singh defendant No.2 raised construction beyond his share on the joint holdings, he would not be having any right to claim damages from Ram Karan and the land suggested to be given to Ram Karan is situated far from abadi and has no market value. The objections were contested by defendant No.2 Soran @ Swaran Singh challenging their maintainability further stating that land had been partitioned by protecting the possession of the respective parties over the spot to the extent of their shares and that share allotted to Soran @ Swaran Singh has been in his possession since long where he has raised construction of house and boundary wall; the portion given to objector Ram Karan is in his possession and he has also constructed a house thereon.

12. The First Appellate Court while disposing of the two appeals has observed that admittedly about 25 kanals of land was left for partition apart from 19 marlas of land utilized by the State of Haryana and some part of the land was consumed by the parties for carving out passages etc. and on the remaining land construction of

the parties is in existence, whereas the partition has been ordered to maintain the possession, which was agreed to by the parties. It was further observed that once the parties themselves desired to partition the land by maintaining their possession to the extent of their shares some adjustment during partition has to be made. As regards the utilization of 19 marlas of land by the State of Haryana for the purpose of construction of the road without paying any compensation, First Appellate Court has rightly observed that all the parties concerned are bound to suffer loss of compensation to their respective shares without prejudice to either of the party. The Court also considered the objections raised by Ram Karan that land allotted to him is away from the road and is to less value than the land allotted to share of others. The objection taken on behalf of Soran @ Swaran Singh that Collector Rate of Rs.65,000/- per marla has wrongly been accepted treating the land as 'chahi' when as a matter of fact it was 'berani' having much less value. The First Appellate Court has rightly observed that when one goes to practical purpose, such as construction of house, then its entry in the revenue record with regard to type of land may be irrigated or not irrigated becomes immaterial and that the trial Court has to keep into mind the partition of land in best possible manner because the Court concerned will have to evolve some formula to carry out the partition otherwise the objections raised on one or the other ground would not stop pouring

in.

13. Both the judgments and decrees are quite detailed and well reasoned passed as a result of proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No substantial question of law or fact arises in the appeal.

14. Findings no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.1.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No