



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CR-452-2024 (O&M)  
Reserved on: 03.07.2024  
Pronounced on: 08.07.2024

SURESH KUMAR

.... PETITIONER

Vs.

RAKESH KUMAR

.... RESPONDENT

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Argued by:- Mr. Lokesh Sinhal, Advocate (through VC) and  
Mr. Sukhandeep Singh, Advocate, for the petitioner.

Mr. Satyendra Kumar, Advocate, with  
Mr. Gaurav Mohunta, Advocate, for the respondent.

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DEEPAK GUPTA, J.

Petitioner is aggrieved by the order dated 30.05.2023 (*Annexure PI*) passed by Id. Civil Judge Junior Division, Gurugram in CM-92-2020, whereby applications for passing final decree of partition, preferred by the petitioner /plaintiff/ decree-holder as well as by the respondent/ defendant/ judgment-debtor/counter-claimant have been merged with the aforesaid CM-92-2020.

2.1 Perusal of the paper-book would reveal that petitioner-Suresh Kumar and respondent-Rakesh Kumar are real brothers. They are co-owners of two parcels of land, one measuring 65 Kanal 3 marla, and other, having an area of 37 kanal 13 marla, both adjacent to each other and situated at village Sidhrawali, Tehsil Manesar, District Gurugram.

2.2 Two separate Civil Suits bearing No.85 of 2017 with respect to land measuring 65 kanal 3 marla; and Civil suit No.86 of 2017 with respect to



land measuring 37 kanal 13 marla, were filed by the plaintiff seeking partition of both parcels of the land. Along with written statement, defendant filed counter-claim, in which he sought partition of the entire joint property. Necessary issues were framed. Two suits were consolidated and after completion of trial, the same were decided by common judgment dated 03.01.2020 (*Annexure P2*). The relief granted in the said common judgment is 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 ½ 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.”*

Separate decree-sheets (*Annexures P3 & P4*) were prepared in respect of both the suits, which are to the same effect.

2.3           None of the parties preferred any appeal against the aforesaid judgment & decree and as such, the same attained finality. Plaintiff then filed two applications praying for passing of the final decree. In one application, he included one parcel of the land measuring 65 kanal 3 marla, whereas in another application, he sought passing of the final decree regarding other parcel of the land measuring 37 kanal 13 marla. On the other hand, the defendant, on the basis of decree passed in the counter claims, also preferred two applications for passing of the final decree. Later on, defendant moved an application to consolidate all the four applications under Section 151 CPC. Plaintiff opposed the same. The application was dismissed by Id. Civil Judge (Junior Division), Gurugram vide order dated 08.12.2022, which was assailed by the defendant by filing two Civil Revi-



sions bearing CR Nos.375 of 2023 & 340 of 2023, before this Court. Both these Civil Revisions were disposed of vide a common order dated 09.05.2023 (*Annexure P10*) by a Coordinate Bench of this Court, whereby the order dated 08.12.2022 of the trial Court was set aside. The Court below was 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.

2.4 It will not be out of place to mention that said order dated 09.05.2023 of this Court was assailed by the plaintiff before Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) Nos.16155-16156/2023, but the same were dismissed vide order dated 07.08.2023 (*Annexure R1*). Still not satisfied, plaintiff filed Review Petition (Civil) Nos.2017-2018/2023, but the same were also dismissed by Hon'ble Supreme Court vide order dated 09.01.2024 (*Annexure R2*).

3. Consequent to the order dated 09.05.2023 (*Annexure P-10*) of this Court, learned Civil Judge (Junior Division), Gurugram by way of impugned order (*Annexure P-1*) decided to take up all the miscellaneous applications together. CM/93/2020, CM/57/2021, CM/56/2021 were merged with CM/92/2020.

4. Assailing the aforesaid order, plaintiff filed this revision contending that in its order dated 09.05.2023 (*Annexure P-10*), it was stipulated by this Court that it is not a case of intermingling of the two parcels of land and therefore, by merging of all the applications with CM/92/2020, the end result would be the intermingling of the two parcels of the land, which will cause grave prejudice to the petitioner- plaintiff at the time of partition. Petitioner prays for setting aside the order dated 30.05.2023 (*Annexure P-1*) and that trial Court be directed



to take up CM/92/2020 and other applications preferred by the plaintiff and the respondent for final decree of partition, together.

5. Respondent opposed the petition by submitting that impugned order has been passed by the trial Court in compliance of the order dated 09.05.2023 of this Court.

6. Having considered submissions of both the sides, this Court does not find any merit in this petition.

7. It is important to notice that in the judgment dated 03.01.2020 (*Annexure P-1*), whereby the two suits filed by the plaintiff- petitioner along with the counter-claims were decreed, the preliminary decree was passed for partition by metes and bounds by declaring the two parties entitled to  $\frac{1}{2}$  share each in the entire joint property i.e. suit property of the main suit as well as the connected suit. Separate decree-sheets were prepared on the same lines.

8. Besides, it is important to notice the observations made by this Court in its order dated 09.05.2023 (*Annexure P-10*), in CR/375/2023 & CR/340/2023, which are as under:

*“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.”*

9. Thus, in the aforesaid order, this Court clarified that trial Court ought to have accepted the petition for consolidation of all the applications for passing of the final decree 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



in respect of two parcels of land, then there would be wide scope for making adjustments while allotting separate chunks to the co-sharers, which would be their absolute ownership. Not only this, this Court further clarified that counter-claim having also been decreed regarding the partition of the entire property i.e. both the parcels of the land and the decree having been passed in both the suits also to the same effect, therefore, plaintiff (*petitioner herein*) cannot insist that two parcels of the land/property be partitioned independently and rather, the partition of the two parcels of the land is to be taken up together. It was in this background that it was observed that it was not a case of intermingling as was being projected on behalf of the plaintiff.

10. In view of the preliminary decree passed by the trial Court in the two suits & the counter-claims and the observations made by this Court in its order dated 09.05.2023 (*Annexure P-10*), this Court does not find any illegality in the impugned order (*Annexure P-1*), whereby the trial Court has directed to take up all the four applications for passing of the final decree together and to merge all those applications, inasmuch as the order has been passed in compliance of the order of this Court dated 09.05.2023.

Dismissed.

08.07.2024

*Neetika Tuteja*

(DEEPAK GUPTA)  
JUDGE

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|----------------------------|--------|
| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |