



132

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

CR-2858-2024**Date of Decision: July 17, 2024****RAM DHAN**

.....Petitioner

Versus

DALIP SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Satyapal Khatri, Advocate for the petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been laid to an order dated 22.03.2024 passed by the learned Addl. District Judge, Sonipat whereby, an application filed at the instance of petitioners seeking recalling of an order dated 01.09.2021 passed by the First Appellate Court stands declined.

2. In the present case, dispute relates between the brothers regarding partition of their joint holdings including the agricultural land as well as the residential property. A settlement came to be arrived at between the brothers and in terms thereof, an order dated 01.09.2021 was passed by the learned Addl. District Judge-cum-Presiding Officer, Daily Lok Adalat, Sonipat. Relevant portion of the same is extracted hereunder:-

“Matter has been discussed at length and after due negotiation, parties arrived at mutual settlement with regard to distribution of agricultural as well as residential properties equally. Joint statement of parties with regard to mutual settlement is recorded separately. Both side parties have also placed two site plans relating to agricultural property {9-K4-M} as Mark-A and residential property 666 Square yards as Mark-B showing description of their equal 1/5th specific share, to which, they have to take possession

at site. They further stated that they shall be bound by their statement in letter and spirit and this settlement shall be implemented at site within 60 days positively by themselves. They will not raise any dispute in future against each other. They also decided to withdraw execution petition relating to devision of agricultural property, pursuant to this settlement. In the light of their joint statement, both parties shall be bound by their joint statement with regard to settlement in letter and spirit. Resultantly, present appeal is disposed of, binding parties in this appeal, to comply their mutual settlement with in stipulated period of 60 days in letter and spirit. File be consigned.”

3. At the time of passing of the aforementioned order, joint statement of the parties as well as their counsels was also recorded by the Court below which again is extracted hereunder:-

“Joint Statement of Ram Dhan (plaintiff) and defendants Dalip Singh, Attar Singh, Bani Singh and Gopal represented by Shri S.C. Jain, Advocate and Shri C.S. Gehlot, Advocates.

W/o

Jointly stated that during the pendency of this civil appeal, we have mutually decided to divide agriculture land as well as residential land equally I the extent of 1/5 th share each. According to settlement, we all five brothers shall take 1/5 share in total agriculture land measuring 9 kanal 4 marlas which come to 1 kanal 17 marlas each share. Further, area of residential house is of 666 Sq.yards and we have mutually decided to divide the same in equal share to the extent of 1/5 share i.e. 133 Sq. yard each. We have resolved all disputes pursuant to settlement by dividing of agriculture land as well as residential property equally according to site plan, prepared by us which are produced as Mark-A and Mark-B bearing our signatures. We shall be bound by this settlement in letter and spirit and shall be implemented at site within 60 days positively by ourselves. We will not raise any dispute in future against each other. There is pending execution petition relating to agriculture property, which shall be withdrawn by concerned parties pursuant to this settlement, in the light of this statement. Resultantly, present appeal be disposed off, pursuant to this statement.”

4. Suddenly, after a period of almost 2 years, an application came to be filed at the instance of petitioner seeking recalling of the compromise as well as the order dated 01.09.2021. The aforesaid application was opposed at the instance of the respondents. The Court

below vide order dated 22.03.2024 rejected the prayer made on behalf of the petitioner.

5. Impugning the aforesaid order, learned counsel for the petitioner submits that the Court below while rejecting the application, travelled beyond the scope of prayer made therein and went on to modify the order dated 01.09.2021 which was wholly impermissible. He further submits that alternate direction issued by the trial Court regarding transfer or payment of minimum price value @ Rs.15,000/- per square yard for the excess area measuring 1113 square yard jointly belonging to all the parties and at present being in exclusive possession of the petitioner was totally illegal. Learned counsel also places reliance upon judgments passed by the Hon'ble Supreme Court in Civil Appeal Nos.6325-6326 of 2015 titled as "**Ms. Akella Lalitha Vs. Sri Konda Hanumantha Rao and Anr.**" and Civil Appeal Nos.5798-5799 of 2008 titled as "**Bachhaj Nahar Vs. Nilima Mandal and Anr.**" as well as judgment passed by this Court in RFA-3819-1998 titled as "**Punjab Wakf Board Vs. Haryana State and Others**".

6. I have heard learned counsel for the petitioner and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the petitioner.

7. In the present case, the dispute relates between the brothers regarding partition of their agricultural land as well as residential plots situated within the Abadi Deh of Village Garh Shahjhapur, Tehsil and District Sonipat. On a suit for possession by way of partition, judgment and decree dated 19.11.2010 was passed

declaring the parties to be owner to an extent of 1/5th share each. An appeal filed at the instance of petitioner against the judgment and decree dated 19.11.2010 was dismissed by the learned Addl. District Judge, Sonipat on 16.05.2011 followed by dismissal of his RSA-3953-2011 decided on 06.02.2012. Based on the judgment and decree dated 19.11.2010, petition for final decree was filed, however, objections to it were presented by the petitioner, which were dismissed on 03.09.2014. Later, in the follow up proceedings, the matter came to be settled between the parties before the Presiding Officer, Daily Lok Adalat, Sonipat on the basis of their joint statement recorded on 01.09.2021. Despite the aforesaid, the petitioner having failed to follow the settlement moved an application dated 01.07.2023 before the Daily Lok Adalat for seeking permission to recall the settlement dated 01.09.2021. The sole grouse raised on behalf of the petitioner was that a school known as "Sardar Patel High School" raised at his instance over the joint property which extends beyond his share therein, requires demolition in case the settlement dated 01.07.2023 was to be complied with and as such, in the absence of any resolution qua the same, the compromise between the parties was required to be recalled.

In the given facts, undisputedly, the compromise dated 01.09.2021 was arrived at between the parties and their joint statements were also recorded. At the time of recording of statements, it was expressed that the parties to the present litigation i.e. all the five brothers shall get 1/5th share each in the total agricultural land measuring 9 kanals and 4 marlas and nothing was mentioned about the

school or its building. Even otherwise, in the absence of their being any consent extended by any of the other co-sharer in favour of the petitioner at the time of raising of construction of the school building which was undisputedly beyond his share, the respondents at the time of partition cannot be put to loss and made to suffer under the threat of demolition/removal of school building causing loss to the petitioner. Moreover, in the given facts, the order passed by the Court below appears to be most equitable and justifiable and also in consonance with the prayer made by the petitioner in his application for recalling of the settlement which is extracted hereunder:-

“It is, therefore, prayed that the applicant/respondent may kindly be allowed/ permitted to withdraw/re-call the compromise dated 1.9.2021 on the grounds mentioned above in the interest of justice or in the alternative the order dated 1.9.2021 may kindly be modified in view of the above objection.”

In the wake of aforementioned prayer, made by the petitioner in the application wherein, as an alternate he prayed for modification of the order dated 01.09.2021, the impugned order regarding payment of value of excess land measuring 1113 square yards in possession of petitioner at the rate of Rs.15,000/- per square yard to respondents cannot be termed to be unjustified or illegal especially, when the period of almost 15 years has gone by and the respondents are still trying to seek enforcement of judgment and decree dated 19.11.2010 passed in their favour by the learned Addl. Civil Judge, (Senior Division), Sonipat regarding partition of joint property.

8. In the case in hand, the parties being brothers, entered into a settlement and furnished two site plans Mark-A and Mark-B before the

Court regarding partition of their agricultural land as well as residential house respectively. No such plea about the construction of Sardar Patel High School was ever raised at the time of settlement between the parties before the Court below and the objection regarding Order 23 Rule 3 CPC was now being raised after a gap of around 2 years just to drag on his feet so as to avoid the delivery of possession in terms of a consented order passed by the Court below on 01.09.2021. In the given facts and circumstances, the alternate direction issued by the Court below in its impugned order regarding payment of minimum price value @ Rs.15,000/- per square yard to the other brothers by the petitioner against demolition of his school is the most equitable and reasonable been passed in order to safeguard the interest of the petitioner and also to fill in the gaps in the settlement and thus, goes in favour of petitioner only having furthered his cause. In fact, the petitioner who is in possession of excess of 1113 square yards of joint holdings appears to be not willing to part with the same at the loss of his brothers who are respondents herein. In the given facts, the judgments relied upon by the Court below are distinguishable.

9. In such circumstances, finding no illegality or perversity with the discretion exercised by the Court below, the same is dismissed, being devoid of merits.

17.07.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>