



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

147

SAO-17-2021 (O&M)
Date of decision: 23.07.2024

TARSEM SINGH

..Appellant

Versus

TILAK RAJ AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

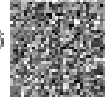
Present: Mr. Mansur Ali, Advocate
Mr. Imran Ali, Advocate
and Mr. Amarpreet Kooner, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for respondent No.1 to 4.

None for respondent No.5, 6, 8 and 9.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the trial Court for passing a fresh speaking order after examining the local commissioner.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The suit property is only 2 kanal and 5 marlas located in village. The plaintiff filed a suit for possession by way of partition of the property by metes and bounds. The preliminary decree for partition was passed on 10.09.2014. The shares of all the co-owners were determined. The aforesaid preliminary decree became final between the parties. Thereafter, the appellant filed an application for preparation of final decree. The Court appointed a revenue official to inspect the site and proposed the mode of partition. The aforesaid report was submitted by the local commissioner. The



respondents filed the objection petition. The trial Court accepted the report of the local commissioner on the ground that if this report is accepted, there will be no need to demolish any constructed portion and passed the final decree for partition confirming the mode of partition suggested by the local commissioner. The respondents filed an appeal. The First Appellate Court while deciding the appeal has held that the parties are entitled to substantiate their objections and therefore, it is necessary as per rule of practice that the local commissioner should be examined first of all. The Court also held that the trial Court has failed to pass speaking order on the objection petition filed by the respondents. The correctness of the aforesaid order has been challenged in this appeal.

4. The learned counsel representing the appellant contends that he has no objection if the local commissioner is examined by the First Appellate Court. He submits that remitting the matter back to the trial Court would entail further delay, which should be avoided.

5. Per contra, the learned counsel representing the respondent No.1 to 4 submits that the Court of first instance cannot pass simultaneous decree while confirming the report of the local commissioner. He submits that the trial Court did not adjudicate the objections in accordance with law. He further submits that the parties will lose their right of first appeal if the First Appellate Court is ordered to examine the local commissioner and decide the objection afresh.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. The effort of the Courts should be to expedite the conclusion of the matter. Remitting the cases back to the lower Court for small errors here



and there would result in prolonging the litigation, which should be avoided at every cost. The First Appellate Court is a Court of law and fact both. The local commissioner is a revenue official, who has submitted the report after visiting the spot. He can very well be examined by the First Appellate Court while granting an opportunity to the parties to cross-examine him. In the opinion of this Court, the aforementioned course of action would result in expeditious disposal of the matter. While passing the fresh order, the Appellate Court shall also consider respondents submissions that simultaneously the order confirming the report as well as passing of final decree should be avoided.

8. Keeping in view the aforesaid discussion, the appeal is allowed. The impugned order passed by the First Appellate Court is set aside while restoring the appeal to its original number and the First Appellate Court is directed to examine the local commissioner and further proceed in accordance with law.

9. The parties through their learned counsel are directed to appear before the First Appellate Court on 20.08.2024.

10. Needless to observe that the observations made by this Court shall not be construed as the final expression on the merits of the case.

11. All the pending miscellaneous applications, if any, are also disposed of.

July 23rd, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No