



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6982-2023 (O&M)

Date of Decision: 24.07.2024

RAM RATTAN SINGH AND OTHERS

.... PETITIONERS

Vs.

BASTI AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Surinder Singh Joshi, Advocate, for the petitioners.

DEEPAK GUPTA, J.

Preliminary decree for partition of the suit property was passed on 27.10.2017 in Civil Suit No.143 of 2016 [CNR No. HRPLA0-000327-2016] titled '*Ram Rattan Singh and others Vs. Basti and others*', by Id. Additional Civil Judge (Senior Division), Hodal, declaring both the parties to be owner to the extent of 1/2 share.

2. Application bearing CM-163-2017 for passing of the final decree was moved, during which a Local Commissioner was appointed to suggest the mode of partition. After receiving his report, the application for passing of the final decree was allowed, by making the report of the Local Commissioner along with the site plan prepared by him to be the part of the final decree, by way of the impugned judgment and decree dated 18.08.2023.

3. Assailing the aforesaid judgment and decree, defendants of the case are in this appeal.

4. It is contended by Id. counsel that notice of the visit of the Local Commissioner was not sent to all of the appellants. Besides, suit property i.e. Rectangle No.270//26 is a *gair mumkin chah* i.e. a well and so, it cannot be partitioned.

5. After hearing Id. counsel for the appellants and going through the impugned order passed by the trial Court, this Court does not find any merit in this petition.

6. Firstly, there is nothing on record to show that any appeal was filed against the preliminary decree. Not only this, in the trial Court, at the time of passing of the preliminary decree, stand was taken by the appellants that mutual partition had already taken place. The said stand taken by the defendants-appellants was not believed by the Court.

7. Further, it will be relevant to reproduce the observations made by the

trial Court in the impugned order, whereby the first contention raised by the counsel for the appellants was duly considered. It reads as under: -

“4. It would be relevant to discuss here that during the pendency of this application, Halqa Girdawar was appointed by the Court as Local Commissioner. The said local Commissioner submitted his report on dated 15.11.2022, suggesting the mode of partition after demarcation of the property in accordance with the shares of the parties. Thereafter, few objections were raised pertaining to the fact that there is Kua (chap Pukhta) which falls in the Rect no. 26 is the number of firni of the well (kua) and such land cannot be partitioned as per the land revenue Act. Thereafter, the arguments on the present application for passing a final decree in the light of facts and circumstances advanced.

5. I have heard learned counsel for the plaintiff at length and has perused the record of the judicial file very carefully with his able assistance. Both the parties argued on the same lines as contained in their application. So, it would be a futile exercise to reproduce the arguments herein again. At this stage, the Court is of the confirmed and considered view that the present application for passing the final decree should be allowed for the reasons mentioned therein that the perusal of the file reveals that preliminary decree was passed on 27.10.2017. On the basis of that preliminary decree, the applicants have filed the present application for passing of final decree. Report of Local Commissioner has been perused. The Local Commissioner has suggested the mode of partition that which portion is proposed to be delivered to whom, wherein parties are in possession and share of the parties as under:

Sr. No.	Name	Killa No.	Share
1.	Rattan Singh, Hukam Singh, Kawarpal sons of Akhepal	270//26/1	0-13
2.	Bastiram, Virender, Partap, Arjun Singh son of Chhidaram	270//26/2	0-13

6. After, perusing the report submitted by the Local Commissioner and the site plan and other relevant document annexed with the judicial file. The Court is of the view that no prejudice will be caused to the parties, if the suit property is partitioned in the aforesaid manner as the mode of partition as suggested by Local Commissioner is most viable and feasible. This court finds that there is no objections to the parties on the passing of final decree as per the above mode of partition suggested by Local Commission and in the said demarcation and partition proceeding, dated 11.11.2022 both the parties namely Rattan Singh & Arjun, Basti Ram had been duly present and signed on the report of LC. Furthermore there is no objection raised with respect to the mode of partition was not conducted at the back or in the absence of any party. Moreover, there is no specific pleading or finding with regard to the chap Pukhta (kua) given by the Ld. Court which passed preliminary decree. Therefore, this court does not finds it fit to delve deep in the detail. Moreover, the

relief clause of the said decree clearly shows the extent of property to be given to the plaintiffs and defendants in equal shares i.e. half share. Hence, in consonance with foregoing discussion, the present application in hand for passing final decree is hereby allowed. A final decree is hereby passed in terms of the site plan and the report submitted by the local Commissioner. The report of local Commissioner alongwith site plan be made part of the final decree. Decree sheet be prepared accordingly.”

8. Thus, it has been found by the Court that intimation was sent to both the parties regarding visit of the Local Commissioner. Rattan Singh, Arjun Singh and Bastiram from the two sides had appeared and signed on the report of the Local Commissioner. Simply because some of the appellants did not sign the report, cannot be a reason to reject the report of the Local Commissioner.
9. Apart from above, perusal of jamabandi for the year 2016-17 (Annexure P4), placed on record by Id. counsel for the petitioners would reveal that *chah* (well) in the disputed land measuring 1 kanal 7 marla is *gairjari* i.e. discontinued/not in use.
10. In these circumstances, it cannot be said that Civil Court did not have jurisdiction. Taking into consideration the above circumstances, this court does not find any merit in the present revision and so, the same is hereby dismissed.

24.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>