



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

109

CR-3748-2022 (O&M)

Date of decision: 08.01.2026

Parkash Kaur

...Petitioner(s)

Vs.

Jagir Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Prateek Sodhi, Advocate
for the petitioner.

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

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of Constitution of India has been filed by defendant No.7 against the order dated 05.08.2022 (Annexure P-9) passed by Civil Judge (Junior Division), Ajnala; whereby application filed by the petitioner and other defendants under Section 151 CPC to amend the Preliminary Decree dated 10.05.2010 or to pass fresh Preliminary Decree, has been dismissed.

2. Brief facts of the case in chronological order are as follows: -

13.09.2003: Plaintiff/respondent No.1 had filed suit for partition by metes and bounds against the petitioner/defendant No.7 and others.

10.05.2010: Vide exparte (qua the petitioner) judgment and decree dated 10.05.2010 (Annexure P-1), Preliminary Decree was passed declaring share of the parties.



06.04.2011: Pursuant to the exparte judgment and decree dated 10.05.2010 (Annexure P-1), the plaintiff had filed application dated 06.04.2011 (Annexure P-2) for passing of final decree.

21.02.2014: The petitioner and defendants No.1 and 2 filed reply dated 21.02.2014 (Annexure P-3) to the said application raising objections to the passing of the final decree. Defendants No. 5 and 6 also filed reply dated 09.09.2011 to the application (Annexure P-2) filed by the plaintiff.

17.01.2017: The petitioner also filed an application dated 17.01.2017 (Annexure P-4) for leading additional evidence in the form of original sale deed dated 16.1.2004. The respondent/plaintiff filed reply dated 14.02.2017 (Annexure P-5) to the said application filed by the petitioner for leading additional evidence.

27.03.2017: Vide order dated 27.03.2017, the said application of the petitioner for leading additional evidence was dismissed.

04.07.2018: The order dated 27.03.2017 was challenged by the petitioner before this Court by way of Civil Revision No. 5144 of 2017. The said Civil Revision Petition No. 5144 of 2017 was allowed by this Court vide order dated 04.07.2018 (Annexure P-6); whereby order dated 27.03.2017 was set aside subject to payment of Rs.15,000/- as costs to the plaintiff.

Nil: Thereafter, Defendants had filed the instant application dated nil (Annexure P-7) under Section 151 CPC to amend the Preliminary Decree.



04.08.2022: The plaintiff had filed reply dated 04.08.2022 (Annexure P-8) to the said application of the defendants to amend Preliminary Decree.

25.08.2022: Vide the impugned order dated 25.08.2022 (Annexure P-9), the said application of the defendants to amend Preliminary Decree had been dismissed.

3. It is *inter alia* submitted by learned counsel for the petitioner that vide order dated 04.07.2018 (Annexure P-6), this Court had set aside the order dated 27.3.2017; and had permitted the petitioner to lead additional evidence in the form of original sale deed dated 16.1.2004; whereby, plaintiff had sold his share with respect to Khasra No. 187/1. As a result, thereafter, respondent No.1 was left with no share in the said Khasra no.187/1. Accordingly, petitioner had sought to place on record Sale Deed dated 16.01.2004, which had not been brought to the notice of the learned Trial Court by the plaintiff at the time of passing of Preliminary Decree dated 10.05.2010, as, the said portion of land ought to have been excluded from the Preliminary Decree. However, this fact was not brought to the notice of the learned Trial Court by respondent No.1. Moreover, petitioner had transferred property to Rabinder Singh and his son Pawanpreet Singh. As such, property falling in Khasra No. 187/1 was a private property. Therefore, it was necessary to amend the Preliminary Decree in the light of execution of Sale Deed dated 16.01.2004.



4. Learned counsel contends that however, the learned Trial Court has dismissed the application of the petitioner for amendment of decree merely on the ground that petitioner had not filed appeal against the Preliminary Decree dated 10.05.2010. Learned counsel relies upon judgment of Hon'ble Supreme Court passed in **Ganduri Koteshwaramma v. Chakiri Yanadi (SC): Law Finder Doc Id # 273849**, to submit that in a similar situation, amendment of Preliminary Decree was permitted.

5. It is further submitted by learned counsel for the petitioner that the Ld. Court below not only failed to consider the illegal and fraudulent conduct of Respondent No.1 but also has failed to take note of the observation rendered by this Court vide order dated 4.7.2018. While allowing the application for additional evidence, it had been specifically observed by this Court that the effect of the additional evidence would be tested by the Ld. Trial Court at the relevant stage. Apparently, the proceedings before the Ld. Court below had been fixed at the stage of determining the mode of partition. As such, it was incumbent upon the Ld. Court below, who had been apprised of the execution of the sale deed date January 16, 2004, to freshly determine the shares of the parties. It is apposite to note that the execution of the sale deed has not even disputed or denied by Respondent No.1. Thus, the Ld. Court below has committed perversity in brushing aside the aforesaid crucial aspect that too while returning legally unsustainable and untenable observations.



6. It is accordingly prayed that the present Civil Revision be allowed; and the impugned order be set aside.

7. Learned counsel for the respondent vehemently opposes submissions made on behalf of the petitioner and submits that impugned order does not suffer from any error. He further points out that it is incorrect to suggest that respondent No.1 had not denied Sale Deed dated 16.01.2004. Learned counsel refers to reply dated 04.08.2022 (Annexure P-8) filed by the plaintiff to the application of the petitioner for amendment of Preliminary Decree; in particular to the averments made in para 2 thereof, to submit that plaintiff had clearly denied execution of the said Sale Deed. He accordingly prays for dismissal of present petition.

8. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of the petitioner.

9. Admittedly, vide order dated 04.07.2018 (Annexure P-6), this Court had permitted the petitioner to adduce additional evidence in the form of Sale Deed dated 16.01.2004. It is clearly recorded in the order dated 04.07.2008 that as the plaintiff had sold 14M of land to the petitioner vide said Sale Deed dated 16.01.2004, therefore, the said Sale Deed would enhance the entitlement of the petitioner and would reduce the entitlement of the plaintiff in the joint land. Clearly, therefore, Sale Deed dated 16.01.2004 has a material bearing on the issue at hand, and no final decree of partition can be passed without



considering the said Sale deed. It has further been observed by the Coordinate Bench in para 9 of the order dated 4.7.2018, as follows:

“9. In view of facts and circumstances of the case, I deem it appropriate to allow defendant No.7/petitioner to adduce additional evidence in the form of original sale deed dated 16.01.2004 executed by the plaintiff himself thereby transferring 14 marlas of land in favour of the petitioner. The effect of additional evidence would be tested by the trial Court at the relevant stage.”

10. Therefore, once the application for additional evidence has been allowed by this Court; and which order admittedly, has not been challenged by the plaintiff; it was incumbent upon the learned Trial Court to take cognizance of the additional evidence/ Sale Deed dated 16.01.2004 adduced by the petitioner.

11. This is especially so in view of the fact that the said Sale Deed has not been outrightly denied by the respondent/plaintiff. A perusal of para 2 of the reply dated 04.08.2022 (Annexure P-8) filed by the plaintiff shows that plaintiff has merely stated that *“The fact regarding sale of any property or sanction of mutation, is matter of record and applicant be directed to put strict proof thereof”*. Clearly therefore, plaintiff has not specifically denied Sale Deed dated 16.01.2004; and has not categorically stated that the said Sale deed was not executed by the plaintiff. The said Sale Deed would have a bearing on the rights of the parties. In this view of the matter, impugned order cannot be sustained.



12. The entire issue is clinched by the judgment of Hon'ble Supreme Court in **Ganduri Koteshwaramma's case (supra)** relied upon by the petitioner; wherein it is held as follows:-

*"17. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation. We are fortified in our view by a 3-Judge Bench decision of this Court in the case of **Phoolchand and Anr. v. Gopal Lal, AIR 1967 Supreme Court 1470** wherein this Court stated as follows :*

"We are of opinion that there is nothing in the Civil Procedure Code which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; there is no prohibition in the Civil Procedure Code against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Civil Procedure Code does not



contemplate such a possibility. . . for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties.....a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree.... "

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20. The High Court was clearly in error in not properly appreciating the scope of Order 20 Rule 18 of C.P.C. In a suit for partition of immovable property, if such property is not assessed to the payment of revenue to the Government, ordinarily passing of a preliminary decree declaring the share of the parties may be required. The court would thereafter proceed for preparation of final decree. In Phoolchand, this Court has stated the legal position that C.P.C. creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.



21. Section 97 of C.P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.

22. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree.”

13. Learned counsel for the respondent is unable to controvert or dispute the above said factual and legal position.

14. In view of the above, present Civil Revision Petition is **allowed**; and impugned order dated 05.08.2022 (Annexure P-9) passed by learned Civil Judge (Junior Division), Ajnala is set aside.

15. Pending application(s), if any, also stand(s) disposed of.

08.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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