

(2019) 10 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 374 Of 2016

Roshan Lal (Now Deceased) Through Legal Representatives
Prakasho And Another

APPELLANT

Vs

Shusheela And Another

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 20 Rule 12

Citation : (2019) 10 SHI CK 0019

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : R.L. Chaudhary, Satyen Vaidya, Varun Chauhan

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this appeal, the appellants have challenged the judgment and decree, dated 31.03.2014, passed by the Court of learned Additional District Judge(II), Mandi, District Mandi in Civil Appeal No. 63/2012, titled as Roshan Lal and another Vs. Smt. Shusheela, vide which, learned Appellate Court while dismissing the appeal filed by the predecessor-in-interest of the appellants, namely, Roshan Lal, upheld the final decree for partition passed on 30.06.2012 by the Court of learned Civil Judge (Senior Division), Mandi in CMA No. 40-VI/2007 filed in Civil Suit No. 14/2003, in which, a preliminary decree stood passed by the learned Trial Court on 01.09.2005.

2. Brief facts necessary for the adjudication of the present appeal are that Civil Suit No. 14/2003 was filed by respondent No. 1 herein for partition of the suit land, in which, a preliminary decree for partition of land comprised in Khata No. 516/504, Khatauni No. 858, Khasra Nos. 737 and 739, Kitas 2, measuring 51.09 sq. metres, situated in Muhal Samkhetar/366/3, Tehsil Sadar, District Mandi, H.P. was passed on 01.09.2005. After passing of the preliminary decree, Tehsildar

Sadar, Mandi was appointed as Local Commissioner to suggest the mode of partition and the same was done by him by way of submission of his report to the learned Trial Court. The terms of the suggested mode of partition find mention in para-3 of order, dated 30.06.2012, passed by the learned Trial Court, which are reproduced hereinbelow:

"3. As per mode of partition, Khasra No. 737/3, 'gair mumkin gali' 739/1, 'Gair Mumkin Dukan' area measuring 25.66 Sq. metres is allotted to applicant Smt. Susheela, while, Khasra No. 737/1 'gair mumkin gali', Khasra No. 739/3 'gair mumkin dukan' area measuring 12.74 Sq. metres is allotted to respondent No. 2 Smt. Shanta Devi, w/o Hans Raj. Similarly, Khasra No. 739/2 'gair mumkin dukan', Khasra No. 737/2 'gair mumkin gali' area measuring 12.69 Square metres, was allotted to respondent No. 1 Roshan Lal."

3. A perusal of the record demonstrates that no objections were filed against the said suggested mode of partition either by the plaintiff-decree holder or the defendants therein, i.e., the appellants herein. Thereafter, on an application filed under Order XX, Rule 12 of the Code of Civil Procedure, a final decree was passed by the learned Trial Court on the basis of mode of partition as suggested by the Local Commissioner by ordering that report of the Local Commissioner shall form part of the final decree. This order was passed on 30.06.2012. While passing the said order, in para-4 thereof, learned Trial Court observed that neither plaintiff nor respondents, i.e., defendants before the learned Trial Court filed objections against the mode of partition, as suggested by the Local Commissioner despite opportunities having been afforded.

4. An appeal was filed by the appellants against the final decree of partition, dated 30.06.2012, passed by the Court of learned Civil Judge (Senior Division), Mandi in CMA No. 40-VI/2003 in Civil Suit No. 14/2003. Final decree of partition stood assailed on the ground that the same was against law and facts, as learned Trial Court had ignored the fact that Local Commissioner had committed serious illegalities and material irregularities while partitioning the joint property. According to the appellants, the spot position as well as possession of the defendants over the suit property deserved to be preserved which was not done by the Commissioner and this aspect of the matter stood ignored by the learned Trial Court.

5. The appeal was dismissed by the learned Appellate Court vide judgment, dated 31.03.2014. While upholding the order passed by the learned Trial Court vide which the mode of partition by metes and bounds as suggested by the Local Commissioner was approved, learned Appellate Court observed that neither the plaintiff nor respondents had filed any objections against the mode of partition, as was suggested by the Local Commissioner despite opportunities in this regard having been afforded to them by the learned Trial Court. It further held that this clearly demonstrated that principles of natural justice stood complied with. It rejected the contention of the appellants that objections were given to the Local Commissioner by way of statements made by the defendants by holding that

objections, if any, against the suggested mode of partition ought to have been filed before the learned Trial Court, which admittedly was not done despite opportunities having been granted by the learned Trial Court. On these grounds, learned Appellate Court dismissed the appeal by holding that no ground for interference with the order passed by the learned Trial Court was made out.

6. Feeling aggrieved, the appellants-defendants filed this appeal, which was admitted on 02.08.2016 on the following substantial questions of law:

"1. Whether the judgment and decree passed by both the Ld. Courts below are sustainable in the eyes of law, wherein the land of common use of parties has been partitioned without taking into consideration the possession of parties and without taking into consideration spot position?

2. Whether both the Learned Courts below have rightly non-suited the appellant/defendant and proforma respondent on the ground that no appeal has been preferred against the preliminary decree?

3. Whether both the learned Courts below have rightly appreciated and discussed the entire oral as well as documentary evidence adduced by the parties as required as per the ratio laid down by the Hon'ble Apex Court, reported in (2005) 5 SCC 652?

7. I have heard learned counsel for the parties and have also gone through the order passed by the learned Trial Court as well as the judgment passed by the learned Appellate Court and also perused the record of the case.

8. It is clearly borne out from the record that after the preliminary decree was passed by the learned Trial Court and Tehsildar, Sadar Mandi was appointed as Local Commissioner to suggest the mode of partition, upon receipt of the mode of partition by way of a report from him, despite opportunities having been granted, no objections whatsoever to the report of the Local Commissioner were filed by the appellants. During the course of arguments, learned counsel for the appellants could not dispute this fact. That being the case, no error can be attributed to the order which was passed by the learned Trial Court on 30.06.2012, vide which, it approved the mode of partition by metes and bounds, as suggested by the Local Commissioner. In the absence of the suggested mode of partition being objected to by the parties, learned Trial Court but natural was to approve the same. Infirmities, if any, in the suggested mode of partition should have been pointed out by the parties by way of filing objections, which admittedly was not done in the present case. In the absence of the same, even the findings returned by the learned Appellate Court to the effect that no ground of interference with the order passed by the learned Trial Court was made out, are correct findings. The very purpose of affording opportunity to the parties to file objections to the suggested mode of partition is to allow the parties to bring into the notice of the Court discrepancies, if any, in the suggested mode of partition. After receipt of any such objections, the Court has to apply its judicial mind on the objections filed vis-a-vis the mode of partition. In the absence of

any objections filed to the suggested mode of partition, but obvious, the inference which the Court has to draw is that none of the parties has any objection to the suggested mode of partition. In this background, learned Trial Court on an application which may be filed before it under Order XX, Rule 12 of the Code of Civil Procedure, has but to approve the suggested mode of partition if the same is in order. A perusal of the mode of partition otherwise also demonstrates that it cannot be said that the same was perverse. The suggested mode of partition finds mention in para-8 of the judgment passed by the learned Appellate Court and as I have already held hereinabove, perusal thereof demonstrates that Tehsildar Sadar has suggested the mode of partition in an equitable and fair manner. In the absence of there being any objections being filed to the suggested mode of partition that the same was prepared without taking into consideration the possession of the parties as also the spot position, this Court cannot draw any such inference. Similarly, in the absence of there being any objections filed against the suggested mode of partition, the valid presumption, but obvious, is that the appellants were not aggrieved by the suggested mode of partition, otherwise nothing stopped them from filing objections to the same. Therefore, both the learned Courts below have rightly non-suited the appellants on the ground that in the absence of objections having been filed to the suggested mode of partition, the defendants could not be permitted to object to the final decree of partition. During the course of arguments, learned counsel for the appellants did not address any submission qua substantial question of law No. 3. Substantial questions of law are answered accordingly.

9. In view of the observations made hereinabove, as this Court finds no merit in this appeal, the same is dismissed, so also pending miscellaneous applications, if any. No order as to costs.