
(2016) 02 P&H CK 0154

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No.2230 of 2015 (O&M)

Smt. Asrfi (since deceased) through her LRs.

APPELLANT

Vs

Ram Lal deceased through his LRs and others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18(9), Order 20 Rule 18(a)

Citation : (2016) 02 P&H CK 0154

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Som Nath Saini, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Darshan Singh, J. - The present revision petition has been preferred against the order dated 21.05.2014 passed by learned District Judge, Gurgaon, vide which the trial court has been directed to decide the objections to the report of the Local Commission after hearing both the parties by passing a detailed reasoned order.

2. Decree-holder/respondent Ram Lal (now deceased) filed the suit for possession by way of partition on the ground that he is owner in possession to the extent of 1/4th share in the plot bearing Khewat No.935, Khatoni No.1188, Rectangle/Khasra No.312(2-7) situated within the abadi of village Jharsa. The petitioner-defendant contested the suit, however, the learned trial court passed the preliminary decree for partition vide judgment and decree dated 17.08.2006 declaring the DH-respondent to be owner of the suit property to the extent of 1/4th share. The appeal filed against the said judgment and decree was dismissed by the learned Additional District Judge, Gurgaon on 31.01.2007. Thereafter, the DH-respondent moved an application for passing the final decree of partition. The appellant-respondent did not appear in response to the notice issued on that application and was proceeded against ex parte. On the application of the DH-plaintiff the trial court appointed Local Commission to

submit his report about the mode of partition. The Local Commission submitted his report dated 20.01.2012. The DH-respondent filed the objections to the said report of the Local Commission. The learned trial court concluded that objection was without any basis. He passed the final decree accepting the report of the Local Commission. Aggrieved with the passing of the order dated 21.03.2012 passing the final decree, the appeal was preferred before the learned District Judge, Gurgaon. The learned District Judge, Gurgaon vide impugned judgment dated 21.05.2014 without disturbing the preliminary decree directed the trial court to decide the objection after hearing both the parties and by passing a detailed reasoned order. Hence, this revision petition.

3. I have heard Mr. Rakesh Dhiman, Advocate, learned counsel for the petitioner, Mr. Som Nath Saini, Advocate, learned counsel for respondents No.1 to 8 and gone through the paper-book carefully.

4. Initiating the arguments, learned counsel for the petitioner contended that the learned District Judge has based his order on the nonexistent provision of law i.e. Order 20, Rule 18 (9) Code of Civil Procedure, 1908 (hereinafter called the "CPC") Thus, he contended that very basis of the order passed by the learned District Judge is illegal. He further contended that there was nothing wrong in the report of the Local Commission. He has suggested the proper mode of partition keeping in view the interest of all the parties. The order passed by learned trial court rejecting the objections does not suffer from any illegality. Thus, he contended that the impugned judgment/order dated 21.05.2014 passed by the learned District Judge is unsustainable in the eye of law.

5. On the other hand, learned counsel for the respondents contended that the order passed by learned trial court was non-speaking. The learned trial court has not given any reason in the order for dismissing the objection petition. Thus, there is no legal infirmity in the impugned judgment/order passed by the learned District Judge.

6. I have duly considered the aforesaid contentions.

7. Though the provision quoted by the learned District Judge in the impugned judgment i.e. Order 20, Rule 18 (9) does not figure in the CPC but at the same time I do not find any substance in the plea raised by learned counsel for the petitioner that said provision was the basis for passing the order by the learned District Judge. This provision has only been referred by the learned District Judge to show that the appellate court can give suitable directions to the trial court for modification of the mode of partition without disturbing the final decree. The matter in issue in the present case is as to whether the objection petition filed by the DH-respondent to the report of the Local Commission has been properly dealt with by the learned trial court or not.

8. It is not disputed that DH-respondent has filed the objection petition against the report of the Local Commission dated 20.1.2012. The learned trial court has passed the order dated 21.03.2013 ordering the passing of the final decree and

dealing with the objections filed by the respondent-DH to the report of the Local Commission as under:-

"Here in the present case, preliminary decree was passed vide judgment and decree dated 17.8.2006 declaring the plaintiff to be the owner of the suit property to the extent of 1/4th share along with a decree for permanent injunction restraining the defendants from changing the nature of the suit property by raising any kind of construction over the disputed property. On the application of decree holder, Local Commissioner was appointed who submitted his report on dated 21.1.2012. Objections to the report of Local Commissioner was filed on dated 22.3.2012. The Local Commissioner after taking into consideration the said fact, suggested the mode of partition of the disputed land vide site plan appended with the report. The objections filed by respondent are without any basis. Therefore, while taking into consideration the factual position existing at the spot, the report dated 20.1.2012 is, hereby accepted and the objections filed by the respondent are held to be without any basis and the same are thus dismissed. A final decree is passed in favour of the applicants as per site plan attached with the report of Local Commissioner dated 20.1.2012. Decree sheet be prepared and file be consigned to record room after due compliance."

9. From the perusal of the aforesaid findings of the trial court it comes out that objection petition filed by the DH (wrongly mentioned as "by respondent" by the learned trial court) has not been dealt with in accordance with law. The learned trial court has simply mentioned that the objections are without any basis. He has not mentioned at all as to what were the objections raised by the DH-respondent and on what reasons those objections were held without any basis. So, the order passed by the learned trial court was non-speaking and not supported with any reasons.

10. Thus, I do not find any illegality in the judgment/order dated 21.05.2014 passed by learned District Judge directing the learned trial court to decide the objections afresh after hearing both the parties and by detailed reasoned order.

11. Consequently, present revision petition has no merits and the same is hereby dismissed.